

TITLE 39A - NATIONAL GUARD AND MILITIA ACT

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Val L. Peterson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill recodifies Title 39, Militias and Armories, as Title 39A, National Guard and Militia Act.

Highlighted Provisions:

This bill:

- ▶ restructures Title 39, Militias and Armories, into Title 39A, National Guard and Militia Act;
- ▶ creates the following new chapters:
 - Chapter 1, Utah National Guard and Militia Act;
 - Chapter 2, State Armory Board;
 - Chapter 3, Utah National Guard;
 - Chapter 4, Utah State Defense Force;
 - Chapter 5, Utah Code of Military Justice;
 - Chapter 6, Utah Service Members Civil Relief Act;
 - Chapter 7, State Morale, Welfare, and Recreation Program; and
 - Chapter 8, West Traverse Sentinel Landscape Act;
- ▶ clarifies that the State Defense Force is not subject to federal activation;
- ▶ specifies qualifications for the adjutant general and staff;
- ▶ removes outdated language and provisions; and
- ▶ makes technical and conforming changes.



Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53-2a-603, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20

59-12-104, as last amended by Laws of Utah 2021, Chapters 280 and 367

76-5-102.4, as last amended by Laws of Utah 2017, Chapters 62 and 123

78B-20-302, as enacted by Laws of Utah 2016, Chapter 292

78B-20-311, as enacted by Laws of Utah 2016, Chapter 292

ENACTS:

39A-1-101, Utah Code Annotated 1953

39A-1-102, Utah Code Annotated 1953

39A-1-203, Utah Code Annotated 1953

39A-2-104, Utah Code Annotated 1953

39A-3-101, Utah Code Annotated 1953

39A-3-104, Utah Code Annotated 1953

39A-3-105, Utah Code Annotated 1953

39A-3-106, Utah Code Annotated 1953

39A-3-109, Utah Code Annotated 1953

39A-5-201, Utah Code Annotated 1953

39A-6-102, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

39A-1-201, (Renumbered from 39-1-12, as last amended by Laws of Utah 2018, Chapter 131)

39A-1-202, (Renumbered from 39-1-23, Utah Code Annotated 1953)

39A-2-101, (Renumbered from 39-2-1, as last amended by Laws of Utah 2010, Chapter 286)

39A-2-102, (Renumbered from 39-2-2, as last amended by Laws of Utah 2021, Chapter 89)

59 **39A-2-103**, (Renumbered from 39-2-9, Utah Code Annotated 1953)
60 **39A-3-102**, (Renumbered from 39-1-3, as last amended by Laws of Utah 2018, Chapter
61 131)
62 **39A-3-103**, (Renumbered from 39-1-9, as last amended by Laws of Utah 1988, Chapter
63 210)
64 **39A-3-107**, (Renumbered from 39-1-51, as last amended by Laws of Utah 2021,
65 Chapter 123)
66 **39A-3-108**, (Renumbered from 39-1-47, Utah Code Annotated 1953)
67 **39A-3-110**, (Renumbered from 39-1-40.5, as last amended by Laws of Utah 2015,
68 Chapter 70)
69 **39A-3-111**, (Renumbered from 39-1-50, as last amended by Laws of Utah 2013,
70 Chapter 237)
71 **39A-3-201**, (Renumbered from 39-1-63, as last amended by Laws of Utah 2015,
72 Chapter 65)
73 **39A-3-202**, (Renumbered from 39-1-65, as enacted by Laws of Utah 2019, Chapter
74 299)
75 **39A-3-203**, (Renumbered from 39-1-59, as repealed and reenacted by Laws of Utah
76 2016, Chapter 96)
77 **39A-3-204**, (Renumbered from 39-1-59.5, as enacted by Laws of Utah 2016, Chapter
78 96)
79 **39A-4-101**, (Renumbered from 39-1-1, as last amended by Laws of Utah 2018, Chapter
80 131)
81 **39A-4-102**, (Renumbered from 39-4-1, as last amended by Laws of Utah 1988, Chapter
82 210)
83 **39A-4-103**, (Renumbered from 39-4-9, Utah Code Annotated 1953)
84 **39A-4-104**, (Renumbered from 39-4-11, as last amended by Laws of Utah 1988,
85 Chapter 210)
86 **39A-4-105**, (Renumbered from 39-4-10, as last amended by Laws of Utah 1988,
87 Chapter 210)
88 **39A-4-106**, (Renumbered from 39-4-3, as last amended by Laws of Utah 1988, Chapter
89 210)

90 **39A-4-107**, (Renumbered from 39-4-8, Utah Code Annotated 1953)
91 **39A-4-108**, (Renumbered from 39-4-5, Utah Code Annotated 1953)
92 **39A-4-109**, (Renumbered from 39-4-12, as last amended by Laws of Utah 1988,
93 Chapter 210)
94 **39A-4-110**, (Renumbered from 39-4-7, Utah Code Annotated 1953)
95 **39A-4-111**, (Renumbered from 39-4-4, Utah Code Annotated 1953)
96 **39A-4-112**, (Renumbered from 39-1-8, Utah Code Annotated 1953)
97 **39A-5-101**, (Renumbered from 39-6-1, as last amended by Laws of Utah 2015, Chapter
98 70)
99 **39A-5-102**, (Renumbered from 39-6-2, as last amended by Laws of Utah 2015,
100 Chapters 70 and 83)
101 **39A-5-103**, (Renumbered from 39-6-6, as last amended by Laws of Utah 2008, Chapter
102 287)
103 **39A-5-104**, (Renumbered from 39-6-3, as enacted by Laws of Utah 1988, Chapter 210)
104 **39A-5-105**, (Renumbered from 39-6-5, as enacted by Laws of Utah 1988, Chapter 210)
105 **39A-5-106**, (Renumbered from 39-6-40, as last amended by Laws of Utah 1988,
106 Second Special Session, Chapter 9)
107 **39A-5-107**, (Renumbered from 39-6-7, as last amended by Laws of Utah 1989, Chapter
108 15)
109 **39A-5-108**, (Renumbered from 39-6-8, as enacted by Laws of Utah 1988, Chapter 210)
110 **39A-5-109**, (Renumbered from 39-6-4, as last amended by Laws of Utah 2018, Chapter
111 131)
112 **39A-5-110**, (Renumbered from 39-6-9, as enacted by Laws of Utah 1988, Chapter 210)
113 **39A-5-111**, (Renumbered from 39-6-10, as last amended by Laws of Utah 1989,
114 Chapter 15)
115 **39A-5-112**, (Renumbered from 39-6-11, as last amended by Laws of Utah 1988,
116 Second Special Session, Chapter 9)
117 **39A-5-113**, (Renumbered from 39-6-12, as enacted by Laws of Utah 1988, Chapter
118 210)
119 **39A-5-114**, (Renumbered from 39-6-23, as enacted by Laws of Utah 1988, Chapter
120 210)

121 **39A-5-115**, (Renumbered from 39-6-24, as enacted by Laws of Utah 1988, Chapter
122 210)
123 **39A-5-116**, (Renumbered from 39-6-26, as enacted by Laws of Utah 1988, Chapter
124 210)
125 **39A-5-117**, (Renumbered from 39-6-27, as last amended by Laws of Utah 2008,
126 Chapter 287)
127 **39A-5-118**, (Renumbered from 39-6-28, as enacted by Laws of Utah 1988, Chapter
128 210)
129 **39A-5-119**, (Renumbered from 39-6-114, as repealed and reenacted by Laws of Utah
130 2018, Chapter 131)
131 **39A-5-202**, (Renumbered from 39-6-15, as last amended by Laws of Utah 2015,
132 Chapter 70)
133 **39A-5-203**, (Renumbered from 39-6-16, as enacted by Laws of Utah 1988, Chapter
134 210)
135 **39A-5-204**, (Renumbered from 39-6-109, as enacted by Laws of Utah 1988, Chapter
136 210)
137 **39A-5-205**, (Renumbered from 39-6-108, as enacted by Laws of Utah 1988, Chapter
138 210)
139 **39A-5-206**, (Renumbered from 39-6-20, as last amended by Laws of Utah 2008,
140 Chapter 287)
141 **39A-5-207**, (Renumbered from 39-1-41.5, as last amended by Laws of Utah 1996,
142 Chapter 198)
143 **39A-5-208**, (Renumbered from 39-6-19, as last amended by Laws of Utah 1989,
144 Chapter 15)
145 **39A-5-209**, (Renumbered from 39-6-30, as enacted by Laws of Utah 1988, Chapter
146 210)
147 **39A-5-210**, (Renumbered from 39-6-31, as last amended by Laws of Utah 1993,
148 Chapter 110)
149 **39A-5-211**, (Renumbered from 39-6-29, as enacted by Laws of Utah 1988, Chapter
150 210)
151 **39A-5-212**, (Renumbered from 39-6-35, as enacted by Laws of Utah 1988, Chapter

152 210)
153 **39A-5-213**, (Renumbered from 39-6-34, as enacted by Laws of Utah 1988, Chapter
154 210)
155 **39A-5-214**, (Renumbered from 39-6-22, as last amended by Laws of Utah 1989,
156 Chapter 15)
157 **39A-5-215**, (Renumbered from 39-6-33, as last amended by Laws of Utah 1989,
158 Chapter 15)
159 **39A-5-216**, (Renumbered from 39-6-32, as enacted by Laws of Utah 1988, Chapter
160 210)
161 **39A-5-217**, (Renumbered from 39-6-38, as enacted by Laws of Utah 1988, Chapter
162 210)
163 **39A-5-218**, (Renumbered from 39-6-41, as enacted by Laws of Utah 1988, Chapter
164 210)
165 **39A-5-219**, (Renumbered from 39-6-39, as enacted by Laws of Utah 1988, Chapter
166 210)
167 **39A-5-220**, (Renumbered from 39-6-42, as last amended by Laws of Utah 1989,
168 Chapter 15)
169 **39A-5-221**, (Renumbered from 39-6-43, as enacted by Laws of Utah 1988, Chapter
170 210)
171 **39A-5-222**, (Renumbered from 39-6-44, as enacted by Laws of Utah 1988, Chapter
172 210)
173 **39A-5-223**, (Renumbered from 39-6-45, as last amended by Laws of Utah 1989,
174 Chapter 15)
175 **39A-5-224**, (Renumbered from 39-6-46, as enacted by Laws of Utah 1988, Chapter
176 210)
177 **39A-5-225**, (Renumbered from 39-6-52, as enacted by Laws of Utah 1988, Chapter
178 210)
179 **39A-5-226**, (Renumbered from 39-6-47, as enacted by Laws of Utah 1988, Chapter
180 210)
181 **39A-5-227**, (Renumbered from 39-6-53, as enacted by Laws of Utah 1988, Chapter
182 210)

183 **39A-5-228**, (Renumbered from 39-6-54, as last amended by Laws of Utah 2008,
184 Chapter 287)
185 **39A-5-229**, (Renumbered from 39-6-55, as last amended by Laws of Utah 1989,
186 Chapter 15)
187 **39A-5-230**, (Renumbered from 39-6-56, as last amended by Laws of Utah 1989,
188 Chapter 15)
189 **39A-5-231**, (Renumbered from 39-6-58, as last amended by Laws of Utah 2008,
190 Chapter 287)
191 **39A-5-232**, (Renumbered from 39-6-59, as enacted by Laws of Utah 1988, Chapter
192 210)
193 **39A-5-233**, (Renumbered from 39-6-61, as last amended by Laws of Utah 1994,
194 Chapter 12)
195 **39A-5-234**, (Renumbered from 39-6-62, as last amended by Laws of Utah 1989,
196 Chapter 15)
197 **39A-5-235**, (Renumbered from 39-6-37, as enacted by Laws of Utah 1988, Chapter
198 210)
199 **39A-5-236**, (Renumbered from 39-6-63, as enacted by Laws of Utah 1988, Chapter
200 210)
201 **39A-5-237**, (Renumbered from 39-6-64, as last amended by Laws of Utah 1988,
202 Second Special Session, Chapter 9)
203 **39A-5-238**, (Renumbered from 39-6-65, as last amended by Laws of Utah 1988,
204 Second Special Session, Chapter 9)
205 **39A-5-239**, (Renumbered from 39-6-107, as last amended by Laws of Utah 1993,
206 Chapter 110)
207 **39A-5-301**, (Renumbered from 39-6-49, as last amended by Laws of Utah 1989,
208 Chapter 15)
209 **39A-5-302**, (Renumbered from 39-6-14, as repealed and reenacted by Laws of Utah
210 2012, Chapter 60)
211 **39A-5-303**, (Renumbered from 39-6-110, as enacted by Laws of Utah 1988, Chapter
212 210)
213 **39A-5-304**, (Renumbered from 39-6-50, as enacted by Laws of Utah 1988, Chapter

214 210)

215 **39A-5-305**, (Renumbered from 39-6-51, as last amended by Laws of Utah 1988,

216 Second Special Session, Chapter 9)

217 **39A-5-306**, (Renumbered from 39-6-17, as last amended by Laws of Utah 1989,

218 Chapter 15)

219 **39A-6-101**, (Renumbered from 39-7-102, as enacted by Laws of Utah 1997, Chapter

220 306)

221 **39A-6-103**, (Renumbered from 39-7-119, as last amended by Laws of Utah 2008,

222 Chapter 382)

223 **39A-6-104**, (Renumbered from 39-7-104, as enacted by Laws of Utah 1997, Chapter

224 306)

225 **39A-6-105**, (Renumbered from 39-7-105, as enacted by Laws of Utah 1997, Chapter

226 306)

227 **39A-6-106**, (Renumbered from 39-7-106, as enacted by Laws of Utah 1997, Chapter

228 306)

229 **39A-6-107**, (Renumbered from 39-7-107, as enacted by Laws of Utah 1997, Chapter

230 306)

231 **39A-6-108**, (Renumbered from 39-7-108, as enacted by Laws of Utah 1997, Chapter

232 306)

233 **39A-6-109**, (Renumbered from 39-7-109, as enacted by Laws of Utah 1997, Chapter

234 306)

235 **39A-6-110**, (Renumbered from 39-7-110, as enacted by Laws of Utah 1997, Chapter

236 306)

237 **39A-6-111**, (Renumbered from 39-7-111, as enacted by Laws of Utah 1997, Chapter

238 306)

239 **39A-6-112**, (Renumbered from 39-7-112, as enacted by Laws of Utah 1997, Chapter

240 306)

241 **39A-6-113**, (Renumbered from 39-7-113, as last amended by Laws of Utah 2018,

242 Chapter 148)

243 **39A-6-114**, (Renumbered from 39-7-114, as last amended by Laws of Utah 2018,

244 Chapter 148)

245 **39A-6-115**, (Renumbered from 39-7-115, as last amended by Laws of Utah 2018,
246 Chapter 148)
247 **39A-6-116**, (Renumbered from 39-7-116, as enacted by Laws of Utah 1997, Chapter
248 306)
249 **39A-6-117**, (Renumbered from 39-7-117, as last amended by Laws of Utah 2018,
250 Chapter 148)
251 **39A-7-101**, (Renumbered from 39-9-101, as enacted by Laws of Utah 2014, Chapter
252 122)
253 **39A-7-102**, (Renumbered from 39-9-102, as enacted by Laws of Utah 2014, Chapter
254 122)
255 **39A-7-103**, (Renumbered from 39-9-103, as enacted by Laws of Utah 2014, Chapter
256 122)
257 **39A-7-104**, (Renumbered from 39-9-104, as enacted by Laws of Utah 2014, Chapter
258 122)
259 **39A-7-105**, (Renumbered from 39-9-105, as enacted by Laws of Utah 2014, Chapter
260 122)
261 **39A-8-101**, (Renumbered from 39-10-101, as enacted by Laws of Utah 2018, Chapter
262 216)
263 **39A-8-102**, (Renumbered from 39-10-102, as enacted by Laws of Utah 2018, Chapter
264 216)
265 **39A-8-103**, (Renumbered from 39-10-103, as enacted by Laws of Utah 2018, Chapter
266 216)
267 **39A-8-104**, (Renumbered from 39-10-104, as enacted by Laws of Utah 2018, Chapter
268 216)
269 **39A-8-105**, (Renumbered from 39-10-105, as last amended by Laws of Utah 2021,
270 Chapter 89)
271 REPEALS:
272 **39-1-2**, as last amended by Laws of Utah 2005, Chapter 65
273 **39-1-4**, as last amended by Laws of Utah 2005, Chapter 65
274 **39-1-5**, as last amended by Laws of Utah 1988, Chapter 210
275 **39-1-7**, Utah Code Annotated 1953

276 **39-1-10**, Utah Code Annotated 1953
277 **39-1-12.5**, as last amended by Laws of Utah 1993, Chapter 110
278 **39-1-13**, as last amended by Laws of Utah 1989, Chapter 22
279 **39-1-14**, Utah Code Annotated 1953
280 **39-1-15**, as last amended by Laws of Utah 2009, Chapter 388
281 **39-1-16**, Utah Code Annotated 1953
282 **39-1-17**, Utah Code Annotated 1953
283 **39-1-18**, as last amended by Laws of Utah 2015, Chapter 83
284 **39-1-19**, Utah Code Annotated 1953
285 **39-1-21**, as last amended by Laws of Utah 2012, Chapter 369
286 **39-1-22**, Utah Code Annotated 1953
287 **39-1-24**, as last amended by Laws of Utah 2012, Chapter 215
288 **39-1-25**, as last amended by Laws of Utah 2011, Chapter 336
289 **39-1-26**, Utah Code Annotated 1953
290 **39-1-28**, as last amended by Laws of Utah 1963, Chapter 61
291 **39-1-29**, Utah Code Annotated 1953
292 **39-1-30**, as last amended by Laws of Utah 1989, Chapter 22
293 **39-1-31**, as last amended by Laws of Utah 1963, Chapter 61
294 **39-1-32**, as last amended by Laws of Utah 2015, Chapter 83
295 **39-1-33**, as last amended by Laws of Utah 1963, Chapter 61
296 **39-1-34**, as last amended by Laws of Utah 1963, Chapter 61
297 **39-1-35**, as last amended by Laws of Utah 1981, Chapter 174
298 **39-1-37**, Utah Code Annotated 1953
299 **39-1-38**, as last amended by Laws of Utah 1988, Chapter 210
300 **39-1-38.5**, as last amended by Laws of Utah 1996, Chapter 198
301 **39-1-39**, as last amended by Laws of Utah 1989, Chapter 15
302 **39-1-41**, as last amended by Laws of Utah 2008, Chapter 287
303 **39-1-44**, Utah Code Annotated 1953
304 **39-1-45**, Utah Code Annotated 1953
305 **39-1-46**, as last amended by Laws of Utah 1953, Chapter 63
306 **39-1-52**, as last amended by Laws of Utah 1963, Chapter 61

307 **39-1-53**, as last amended by Laws of Utah 2018, Chapter 148
308 **39-1-54**, as last amended by Laws of Utah 2015, Chapter 391
309 **39-1-56**, as last amended by Laws of Utah 1989, Chapter 15
310 **39-1-58**, as last amended by Laws of Utah 2004, Chapter 359
311 **39-1-60**, as last amended by Laws of Utah 1988, Second Special Session, Chapter 9
312 **39-1-62**, as last amended by Laws of Utah 1983, Chapter 179
313 **39-2-7**, as last amended by Laws of Utah 1989, Chapter 22
314 **39-4-2**, Utah Code Annotated 1953
315 **39-4-6**, Utah Code Annotated 1953
316 **39-4-13**, as last amended by Laws of Utah 1988, Chapter 210
317 **39-5-1**, as last amended by Laws of Utah 1997, Chapter 211
318 **39-5-2**, as last amended by Laws of Utah 2013, Chapter 295
319 **39-5-3**, as enacted by Laws of Utah 1955, Chapter 130
320 **39-6-18**, as enacted by Laws of Utah 1988, Chapter 210
321 **39-6-21**, as enacted by Laws of Utah 1988, Chapter 210
322 **39-6-36**, as last amended by Laws of Utah 2014, Chapter 189
323 **39-6-48**, as enacted by Laws of Utah 1988, Chapter 210
324 **39-6-57**, as enacted by Laws of Utah 1988, Chapter 210
325 **39-6-111**, as enacted by Laws of Utah 1988, Chapter 210
326 **39-6-112**, as enacted by Laws of Utah 1988, Chapter 210
327 **39-6-113**, as last amended by Laws of Utah 2018, Chapter 131
328 **39-7-101**, as enacted by Laws of Utah 1997, Chapter 306
329 **39-7-103**, as enacted by Laws of Utah 1997, Chapter 306
330 **39-8-101**, as enacted by Laws of Utah 2006, Chapter 333
331 **39-8-102**, as enacted by Laws of Utah 2006, Chapter 333
332 **39-9-106**, as enacted by Laws of Utah 2014, Chapter 122
333 **39-9-107**, as enacted by Laws of Utah 2014, Chapter 122

334

335 *Be it enacted by the Legislature of the state of Utah:*

336 Section 1. Section **39A-1-101** is enacted to read:

337 **39A-1-101. National Guard and Militia Act.**

338 This title governs the Utah National Guard and unorganized militia in accordance with
339 Utah Constitution Article XV.

340 Section 2. Section **39A-1-102** is enacted to read:

341 **39A-1-102. Definitions.**

342 As used in this title:

343 (1) "Adjutant general" means the commanding general of the Utah National Guard as
344 appointed by the governor under Section [39A-1-201](#).

345 (2) "National Guard" means the Utah National Guard created in Section [39A-3-101](#)
346 and in accordance with Utah Constitution Article XV.

347 (3) "Utah State Defense Force" or "Defense Force" means the unorganized militia as
348 structured in Chapter 4 of this title.

349 Section 3. Section **39A-1-201**, which is renumbered from Section 39-1-12 is
350 renumbered and amended to read:

351 ~~[39-1-12].~~ **39A-1-201. Adjutant general -- Appointment -- Term --**
352 **Qualifications.**

353 (1) There shall be one adjutant general of the National Guard appointed by the
354 governor.

355 (2) The adjutant general is the commanding general of the Utah National Guard and the
356 Utah State Defense Force and holds office for a term of six years, unless terminated by
357 resignation, disability, age, in accordance with Subsection (6), or for cause ~~[as determined by a~~
358 ~~military court or court-martial]~~.

359 ~~[(2)]~~ (3) The ~~[person]~~ individual appointed to the office shall:

360 (a) be a citizen of Utah and meet the requirements provided in Title 32, United States
361 Code;

362 (b) be a federally recognized commissioned officer, with the rank of colonel or higher,
363 of the National Guard of the United States with no fewer than five years commissioned service
364 in the Utah National Guard; and

365 (c) as determined by the governor, have sufficient knowledge and experience to
366 command the Utah National Guard.

367 ~~[(3)]~~ (4) Active service in the armed forces of the United States may be included in the
368 requirement in Subsection ~~[(2)]~~ (3)(b), if the officer was a member of the Utah National Guard

when the officer entered that service.

(5) The adjutant general shall establish a succession plan consistent with Section 53-2a-804 to ensure the continuity of command.

~~[(4)]~~ (6) An officer is no longer eligible to hold the office of adjutant general after attaining ~~[66]~~ the age of 64 years ~~[of age]~~.

(7) The adjutant general shall ensure the readiness, training, discipline, and operations of the National Guard.

Section 4. Section **39A-1-202**, which is renumbered from Section 39-1-23 is renumbered and amended to read:

~~[39-1-23].~~ **39A-1-202. Seal of adjutant general.**

The seal of the adjutant general shall be circular in form, containing an inner circle~~[;]~~. ~~[within]~~ Within the inner circle shall be a shield with "Utah" impressed ~~[thereon]~~ on the shield, and between the circles shall be impressed "National Guard, Adjutant General."

Section 5. Section **39A-1-203** is enacted to read:

39A-1-203. Director of joint staff -- Assistant adjutants general -- Chief of staff for the air force.

(1) There is authorized an assistant adjutant general for the Army, an assistant adjutant general for the Air Force, a chief of staff for the Air Force, and a director of joint staff.

(2) The adjutant general, with the approval of the governor, may appoint assistant adjutant generals, a chief of staff for the Air Force, and a director of joint staff with pay from the state.

(3) The assistant adjutants general, the chief of staff for the Air Force, and the director of joint staff shall be at least a federally recognized field grade commissioned officer of the Utah National Guard with not less than five years military service in the armed forces of a state or of the United States, at least three of which shall have been commissioned in the Utah National Guard. The officers shall hold office at the pleasure of the adjutant general.

(4) The adjutant general may detail an officer without the required commissioned service in the Utah National Guard to a position in this section only with the written approval of the governor.

Section 6. Section **39A-2-101**, which is renumbered from Section 39-2-1 is renumbered and amended to read:

400 ~~[39-2-1].~~ **39A-2-101. State Armory Board -- Creation -- Members -- A body**
401 **corporate -- Powers -- Expenses.**

402 (1) ~~[(a) The State Armory Board shall consist of]~~ There is created a three member State
403 Armory Board with the following members:

404 (a) the governor~~[, the chair of the State Building Board,];~~

405 (b) the executive director of the Department of Government Operations; and

406 (c) the adjutant general of the Utah National Guard, appointed in accordance with
407 Section [39A-3-102](#).

408 ~~[(b) It shall be]~~ (2) The board is a body corporate with perpetual succession[;] and the
409 board's property is exempt from all taxes and assessments.

410 ~~[(c) It]~~ (3) The board may:

411 (a) have and use a common seal~~[, and under the name aforesaid may];~~

412 (b) sue and be sued~~[, and];~~

413 (c) contract and be contracted with~~[;];~~

414 (d) [It may] take and hold by purchase, gift, devise, grant, or bequest real and personal
415 property required for [its] the board's use~~[;]; and~~

416 (e) [It may also] convert property received by gift, devise, or bequest, and not suitable
417 for [its] the board's uses, into other property [so] as available, or into money.

418 ~~[(2)]~~ (4) The board shall have power to:

419 (a) borrow money for the purpose of ~~[erecting arsenals and armories]~~ providing
420 facilities, ranges, and training lands upon the sole credit of the real property to which [it] the
421 board has [the] legal title; and

422 (b) may secure [such] the loans by mortgage upon [such] the property~~[;].~~

423 ~~[(i) the]~~ (5) The mortgaged property shall be the sole security for [such] any loan~~[;~~
424 and].

425 ~~[(ii) no]~~ (6) A deficiency judgment [shall] may not be made, rendered, or entered
426 against the board upon the foreclosure of [the] a mortgage~~[;], provided[, however,] that~~
427 property in one city [shall] may not be mortgaged for the purpose of obtaining money for the
428 erection of armories in any other place. [Said board shall be deemed a public corporation, and
429 its property shall be exempt from all taxes and assessments.]

430 ~~[(3)]~~ (7) A member may not receive compensation or benefits for the member's service,

but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 7. Section 39A-2-102, which is renumbered from Section 39-2-2 is renumbered and amended to read:

[39-2-2]. 39A-2-102. Responsibilities of State Armory Board.

(1) The board shall supervise and control ~~[the armories and arsenals]~~ all facilities, ranges, training lands, and all real property held or acquired for the military purposes of the state.

(2) The board may:

(a) provide suitable ~~[armories and arsenals]~~ facilities, ranges, and training lands for the different organizations of the National Guard;

(b) lease ~~[buildings for armory and arsenal purposes]~~ real property throughout the state wherever necessary for the use of organizations of the National Guard and for the storage of state and government property at a rental that the board considers reasonable;

(c) erect ~~[armories and arsenals]~~ facilities and ranges at places within the state that it considers necessary upon lands to which it has acquired the legal title;

(d) expend military funds to acquire legal title to lands and to construct ~~[armories and arsenals]~~ facilities and ranges;

(e) sell and lease property that the board holds under Subsection (1) for purposes consistent with the mission of the Utah National Guard; and

(f) conduct meetings and take official action in person or as necessary via electronic means, including telephone or video teleconferencing, or a combination of these methods.

(3) (a) Subject to Subsection (3)(b), the board may take options for the purchase of any premises under lease to the state for ~~[armory and arsenal]~~ National Guard purposes:

(i) at any time during the life of the lease; and

(ii) when the purchase is in the state's interest.

(b) An option is not binding upon the board until it is approved by the Legislature.

(4) (a) Before legally binding the state to sell or lease any ~~[armory, army premises, or~~

other] real property owned by the National Guard, the board shall submit a description of the proposed sale to the Legislative Management Committee for its review and recommendations.

(b) Before legally binding the state to purchase any interest in real property, the board shall submit a description of the proposed sale to the Legislative Management Committee for its review and recommendations.

(c) The Legislative Management Committee shall review each proposal and may[:]
approve or disapprove the sale.

~~[(i) recommend that the board complete the purchase or sale; or]~~

~~[(ii) recommend that the board not complete the purchase or sale.]~~

(5) The proceeds from the sales and leases of ~~[armories and army]~~ real property authorized by this section shall be appropriated to the State Armory Board to be applied toward the acquisition and sale of real property, and the construction of new armories.

(6) Funds may be deposited into a public treasury investment fund to earn interest until use.

Section 8. Section **39A-2-103**, which is renumbered from Section 39-2-9 is renumbered and amended to read:

[39-2-9]. 39A-2-103. Political subdivisions and state agencies may assist in erecting facilities.

~~[The board of commissioners and city councils of cities shall have power to]~~ Any political subdivision or state agency may appropriate from any funds [of the city] available for general purposes [such sums as they may deem expedient for the purpose of assisting] funds to assist the State Armory Board in the [erection of armories within their respective cities, and for the] acquisition, construction, and maintenance of [armories located and maintained therein, and in all cities where waterworks and an electric light plant are owned by the city the water and electric light used in armories maintained therein may at the discretion of the city be furnished without cost] Utah National Guard facilities and infrastructure.

Section 9. Section **39A-2-104** is enacted to read:

39A-2-104. Use of armories by veterans organizations permitted.

Federally chartered veterans organizations have the right to the use of armories owned or leased by the state at no charge, provided that the use does not interfere with the mission of the Utah National Guard as determined by the adjutant general.

Section 10. Section **39A-3-101** is enacted to read:

39A-3-101. Utah National Guard -- Creation.

(1) There is created the Department of the Utah National Guard.

(2) The Utah National Guard is commanded by an adjutant general and consists of the following:

(a) the joint force headquarters;

(b) the Utah Army National Guard, commanded by an assistant adjutant general for the Army;

(c) the Utah Air National Guard, commanded by an assistant adjutant general for the Air Force; and

(d) the Utah State Defense Force as organized in Title 39A, Chapter 4, Utah State Defense Force.

(3) The numerical strength, composition, distribution, organization, arms, uniforms, equipment, training, and discipline of the National Guard shall be prescribed by the governor in conformity with the laws and regulations of the United States and the laws of this state.

(4) The location of units including headquarters, when not otherwise prescribed by federal law, shall be fixed by the governor on the recommendation of the adjutant general.

Section 11. Section **39A-3-102**, which is renumbered from Section 39-1-3 is renumbered and amended to read:

[39-1-3]. 39A-3-102. Governor commander in chief -- Powers and duties.

(1) The governor by virtue of the governor's office shall be commander in chief of the Utah National Guard [~~and of the unorganized militia, and of any portions of the unorganized militia which may be organized~~].

(2) The governor:

(a) is authorized to issue all orders, rules and regulations necessary to conform the Utah National Guard to Title 32 of the United States Code in its organization, government, discipline, maintenance, training, equipment, and regulations;

(b) shall appoint and commission all officers and select all warrant officers, subject to the provisions of Title 32 of the United State Code; [~~provided, that any appointee failing to receive federal recognition after having been notified by the National Guard Bureau shall revert to status occupied before the appointment;~~]

524 ~~[(c) shall determine and fix the home station and location of the various units of the~~
525 ~~Utah National Guard;]~~

526 ~~[(d)] (c)~~ shall provide ~~[armories, warehouses, maintenance and repair shops, hangars,~~
527 ~~small arms, artillery and aircraft ranges, campsites, concentration areas, training facilities,~~
528 ~~military reservations and arsenals]~~ facilities, ranges, and training lands as required for
529 ~~[organizations of]~~ the Utah National Guard; and

530 ~~[(e) shall furnish suitable offices, or office space for regular army personnel assigned to~~
531 ~~duties with the Utah National Guard, the expenses of which may be paid out of the state~~
532 ~~military appropriations;]~~

533 (d) may order the National Guard into active service as necessary.

534 (3) Notwithstanding Subsection (2)(b), an appointee who fails to receive federal
535 recognition after being notified by the National Guard of the appointment shall revert to the
536 status occupied before the appointment.

537 Section 12. Section **39A-3-103**, which is renumbered from Section 39-1-9 is
538 renumbered and amended to read:

539 ~~[39-1-9].~~ **39A-3-103. National Guard subject to call by United States.**

540 (1) The National Guard ~~[of this state]~~ is at all times subject to the call of the President
541 of the United States.

542 (2) When called into the service of the United States, [it] the National Guard is
543 governed by the applicable laws and military regulations of the United States.

544 ~~[(2)] (3)~~ The National Guard and its members shall attend ~~[drills, encampments, and~~
545 ~~maneuvers as the president directs]~~ military training as required.

546 Section 13. Section **39A-3-104** is enacted to read:

547 **39A-3-104. Service members -- Appointment and promotion.**

548 (1) All officers of the National Guard shall be appointed by the governor and receive a
549 state commission.

550 (2) The power of appointment may be delegated to the adjutant general, and further
551 delegated as the adjutant general considers necessary.

552 (3) Appointments are subject to approval as prescribed by the laws of the United States
553 or related rules or regulations governing the National Guard.

554 (4) The appointment, promotion, and withdrawal of a federal commission shall be

made in a manner consistent with all applicable federal policies, rules, instructions, or regulations.

(5) The withdrawal of a state commission shall be made in accordance with National Guard regulations in effect at the time of consideration for the withdrawal.

(6) The appointment, promotion, and reduction of enlisted personnel shall be made in a manner consistent with all applicable federal policies, rules, instructions, or regulations.

Section 14. Section 39A-3-105 is enacted to read:

39A-3-105. General officer salary and benefits.

(1) Full-time, state employed general officers or officers appointed to a general officer position shall receive a salary that makes the total federal and state compensation at least commensurate with the pay and allowances for their military grade or assigned position, time in grade, and time in service as established in the United States Department of Defense Finance and Accounting Services annual pay and allowances chart.

(2) General officers appointed to state employment shall receive the benefits and protections in Section 39-1-36 for the term of the appointment.

Section 15. Section 39A-3-106 is enacted to read:

39A-3-106. State active duty orders.

(1) Orders for state duty may be oral or written.

(2) Written orders shall be issued by the governor or the adjutant general.

(3) An oral order may be delivered by an officer or noncommissioned officer.

Section 16. Section 39A-3-107, which is renumbered from Section 39-1-51 is renumbered and amended to read:

~~[39-1-51].~~ **39A-3-107. Pay and benefits of National Guard members on state active duty.**

(1) When called into the service of the state and not in the service of the United States, the members of the National Guard shall:

(a) receive at least the same pay and allowance as members of the regular ~~[army]~~ Army or regular ~~[air force]~~ Air Force of like ~~[rank and length of]~~ pay grade and time in service; and

(b) elect to:

(i) receive medical, dental, disability, or death benefits equal to those received by full-time, permanent state employees; or

(ii) maintain any medical, dental, disability, or death benefits already in place~~[-and]~~.
~~[(c) receive one ration per day.]~~

(2) The state may not make payments to members of the National Guard for service for which the United States government makes payment.

Section 17. Section **39A-3-108**, which is renumbered from Section 39-1-47 is renumbered and amended to read:

~~[39-1-47].~~ **39A-3-108. Military property exempt from civil process.**

~~[All military]~~ Military property issued to or owned by members of the National Guard
~~[shall be]~~ is exempt from all civil process.

Section 18. Section **39A-3-109** is enacted to read:

39A-3-109. Loss of property -- Liability.

(1) When Utah National Guard federal property is destroyed, damaged, or lost due to the failure of a service member to perform the duties required by law or regulation, the adjutant general may assess financial liability to the service member.

(2) Within established law and regulation, the adjutant general may require the service member to reimburse the federal government for all or part of the loss, whether the service member is in federal status, state status, or off duty.

Section 19. Section **39A-3-110**, which is renumbered from Section 39-1-40.5 is renumbered and amended to read:

~~[39-1-40.5].~~ **39A-3-110. Utah Code of Military Justice -- Procedures -- Jurisdiction.**

(1) ~~[Title 39, Chapter 6, Utah Code of Military Justice]~~ Title 39A, Chapter 5, is adopted as the Utah Code of Military Justice~~[-which may also be referred to as the UtCMJ].~~

(2) The ~~[UtCMJ]~~ Utah Code of Military Justice sets forth offenses which, if committed by personnel of the Utah National Guard serving under this title or Title 32, United States Code, are punishable as ~~[the Utah Military Court]~~ a military court directs ~~[under regulations made and published under the UtCMJ]~~ in accordance with Chapter 5, Part 2, Military Courts and Part 3, Military Punishments.

(3) ~~[The Utah Military Court is a court of the state, convened under orders issued by the governor or the adjutant general.]~~ Judges of ~~[the]~~ a military court may issue summons, executions, and other process. The process shall be served by county sheriffs, at the expense of

the state.

(4) Judgments for fines or forfeitures may be docketed in the same manner as district court judgments in each county, and without costs.

(5) Appeals shall be taken to the Court of Appeals.

(6) Sentences of ~~[the Utah Military Court]~~ a military court shall be served in a county jail. Costs incurred by the county shall be paid out of the General Fund of the state.

(7) Certification as counsel for prosecution or defense, or as a judge of ~~[the Utah Military Court]~~ a military court, is under orders issued by the adjutant general, and is limited to attorneys who are members of the Utah State Bar and are serving as judge advocates in the Utah National Guard.

(8) A ~~[defendant]~~ service member may retain, at no cost to the state or National Guard, civilian counsel to represent ~~[him]~~ the service member before ~~[the Utah Military Court]~~ a military court.

(9) ~~[The Utah Military Court]~~ A military court may impose fines not exceeding \$2,500, restitution to victims, statutory surcharges, and may issue all writs and judgments for the execution of any ~~[of them]~~ processes.

(10) When consistent with the Utah Manual for Military Courts, the Utah Rules of Criminal Procedure apply ~~[in Utah Military Courts]~~.

Section 20. Section **39A-3-111**, which is renumbered from Section 39-1-50 is renumbered and amended to read:

~~[39-1-50].~~ 39A-3-111. Military court -- Concurrent prosecutorial jurisdiction with county or district attorney.

(1) The county attorney or district attorney, as appropriate under Sections **17-18a-202** and **17-18a-203**, of the county where an offense under the Utah Code of Military Justice is committed has concurrent jurisdiction with ~~[the Utah Military Court]~~ a military court to prosecute the accused ~~[person]~~ individual at the expense of the county.

(2) Charges regarding the offense may not be filed in a military court until the appropriate county attorney or district attorney has reviewed and declined to prosecute the offense.

Section 21. Section **39A-3-201**, which is renumbered from Section 39-1-63 is renumbered and amended to read:

[39-1-63]. 39A-3-201. Tuition and fees assistance for Utah National Guard members -- Use and allocation -- Appropriation.

(1) (a) As used in this section, "fees" means general course fees, in addition to tuition, that are:

(i) imposed by an institution of higher education; and

(ii) required to be paid by a student to engage in a course of study at the institution of higher education.

(b) "Fees" does not include a special course fee.

(2) The Utah National Guard may provide tuition and fees assistance to a member of the Utah National Guard for study at an institution of higher education, subject to the following requirements:

(a) the individual ~~[must]~~ shall be, at the time the individual receives the assistance, an active member of the Utah National Guard; and

(b) the assistance is for tuition and fees only and may not be more than the resident tuition and fees for the actual course of postsecondary study engaged in by the individual.

(3) (a) Tuition and fees assistance shall be awarded ~~[for each academic year]~~ as the adjutant general considers necessary.

(b) An individual may apply to the adjutant general of the state for assistance for each year during which the individual is an active member of the Utah National Guard.

~~[(c) In awarding assistance, the adjutant general shall consider the recruitment and retention needs of the Utah National Guard.]~~

(c) The adjutant general may recoup funds if a recipient fails to meet the requirements of the program.

(4) The adjutant general of the state shall pay ~~[the]~~ tuition and fees assistance directly to ~~[an]~~ the institution of higher education from the funds appropriated.

(5) The adjutant general of the state shall establish regulations, procedures, forms, and reports necessary to administer the allocation of assistance and payment of funds under this section.

~~[(6) The adjutant general of the state shall include a request each year for funds for this program in the annual budget for the Utah National Guard.]~~

~~[(7) An individual who transfers from the Select Reserve to the Utah National Guard is~~

not eligible for the tuition and fees assistance in this section for one year from the date of transfer.]

(6) The adjutant general may use no more than 10% of the funds for administration of the program as the adjutant general considers necessary.

Section 22. Section **39A-3-202**, which is renumbered from Section 39-1-65 is renumbered and amended to read:

[39-1-65]. 39A-3-202. Pay and care of soldiers and airmen disabled while on state active duty.

(1) (a) Before a servicemember may be considered disabled in accordance with this section, the Adjutant General shall determine whether the servicemember's illness, injury, or disease was contracted or occurred through the fault or negligence of the servicemember. If the servicemember is determined to be at fault for an injury or developed a disability through his or her own negligent actions, the servicemember is not entitled to any care, pension, or benefit in accordance with this section.

(b) Notwithstanding Subsection (1)(a) the servicemember may be eligible for benefits in accordance with Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act.

(2) A member of the Utah National Guard or Utah State Defense Force who is disabled through illness, injury, or disease contracted or incurred while on state active duty or while reasonably proceeding to or returning from duty is eligible to receive workers' compensation benefits in accordance with Title 34A, Chapter 2, Workers' Compensation Act.

(3) (a) If the disability temporarily incapacitates the servicemember from pursuing the servicemember's usual business or occupation, the servicemember is eligible to receive workers' compensation benefits in accordance with Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act.

(b) For the duration of the servicemember's inability to pursue a business or occupation, the ~~[Adjutant General]~~ adjutant general shall provide compensation ~~[equivalent to the difference between]~~ so that the total compensation, including the disability compensation received under Subsection (3)(a) [and the total pay and allowances under state active duty as provided in Section 39-1-51.] is commensurate with the injured service member's lost pay. The adjutant general shall consider lost civilian and military pay in the compensation.

(4) A servicemember who is permanently disabled, shall receive pensions and benefits from the state that ~~[persons]~~ individuals under like circumstances in the Armed Forces of the United States receive from the United States.

(5) If a servicemember dies as a result of an injury, illness, or disease contracted or incurred while on state active duty or while reasonably proceeding to or returning from active duty, the surviving spouse, minor children, or dependent parents of the servicemember shall receive compensation as directed in Section ~~[39-1-59]~~ 39A-3-203.

(6) Costs incurred by reason of this section shall be paid out of the funds available to the Utah National Guard.

(7) The ~~[Adjutant General]~~ adjutant general, with the approval of the governor, shall make and publish regulations to implement this section.

(8) Nothing in this section shall in any way limit or condition any other payment to a servicemember that the law allows.

Section 23. Section **39A-3-203**, which is renumbered from Section 39-1-59 is renumbered and amended to read:

~~[39-1-59]~~. **39A-3-203. Compensation for injury or death.**

Within 72 hours of the reported death of a member of the National Guard on state active duty, the state shall provide a death gratuity payment of \$100,000 to:

(1) the ~~[person]~~ individual designated as the recipient of the member's unpaid pay and allowances in the member's service record; or

(2) if no one is designated, the designated ~~[person]~~ individual cannot be found, or the designated ~~[person]~~ individual has predeceased the member, the member's heirs in accordance with Title 75, Chapter 2, Part 1, Intestate Succession.

Section 24. Section **39A-3-204**, which is renumbered from Section 39-1-59.5 is renumbered and amended to read:

~~[39-1-59.5]~~. **39A-3-204. National Guard Death Benefit Restricted Account.**

(1) There is created within the General Fund a restricted account known as "National Guard Death Benefit Account."

(2) (a) The restricted account shall be funded from funds appropriated by the Legislature.

(b) Funds in the restricted account may only be used to pay the death benefit authorized

in Section ~~[39-1-59]~~ 39A-3-204.

(c) The restricted account may accrue interest which shall be deposited into the restricted account.

(d) At the close of any fiscal year, any balance in the fund in excess of \$2,000,000 shall be transferred to the General Fund.

Section 25. Section **39A-4-101**, which is renumbered from Section 39-1-1 is renumbered and amended to read:

~~[39-1-1]~~. **39A-4-101. Utah State Defense Force -- How constituted.**

(1) ~~[All]~~ Unless exempt under Subsection (2), all able-bodied citizens, and all able-bodied ~~[persons]~~ individuals of foreign birth who have declared their intention to become citizens, ~~[who]~~ are 18 years ~~[of age]~~ old or older and younger than ~~[66]~~ 64 years ~~[of age, who]~~ old, and are residents of this state, constitute the ~~[militia, subject to the following exemptions:]~~ Utah State Defense Force.

(2) Individuals exempt from Subsection (1) include:

(a) ~~[persons exempted]~~ individuals exempted from military service by laws of the United States;

(b) ~~[persons exempted]~~ individuals exempted from military service by the laws of this state;

(c) all ~~[persons]~~ individuals who have been honorably discharged from the ~~[army, air force, navy, marines, coast guard]~~ armed forces, or volunteer forces of the United States;

(d) active members of any regularly organized fire or police department in any city or town, but ~~[no]~~ a member of the active ~~[militia is]~~ defense force may not be relieved from duty because ~~[of his joining]~~ the individual joined any volunteer fire company or department; ~~[and]~~

(e) judges and clerks of courts of record~~[-]~~;

(f) state and county civil officers holding office by election~~[-]~~;

(g) state officers appointed by the governor for a specified term of office~~[-]~~;

(h) ministers of the gospel~~[-]~~; and

(i) practicing physicians~~[-, superintendents,]~~ and hospital officers and assistants ~~[of hospitals and prisons and jails]~~.

~~[(2)]~~ (3) All ~~[exempted persons, except those enumerated in Subsections (1)(a) through (e),]~~ individuals described in Subsection (1) are liable to military duty in case of war,

insurrection, invasion, tumult, riot, or public disaster, or imminent danger of any of these, or after ~~[they have]~~ voluntarily ~~[enlisted]~~ enlisting in the National Guard of this state.

Section 26. Section **39A-4-102**, which is renumbered from Section 39-4-1 is renumbered and amended to read:

~~[39-4-1].~~ **39A-4-102. Governor authorized to organize Utah State Defense Force.**

(1) The governor, by virtue of the governor's office, may organize and maintain ~~[within this state, under regulations the United States may prescribe for discipline in training, military forces the governor considers necessary to defend this state]~~ the Utah State Defense Force.

(2) ~~[These forces shall]~~ The Defense Force may be composed of officers commissioned or assigned, and able-bodied citizens of the state who volunteer for service, supplemented if necessary by ~~[persons in the militia]~~ individuals enrolled by draft or otherwise as provided by law.

(3) ~~[These forces]~~ The Defense Force shall be additional to and distinct from the National Guard ~~[and shall be known as the Utah State Defense Force. These forces may be uniformed]~~.

(4) The Defense Force may have prescribed uniforms.

(5) If ordered to active service by the governor, the Defense Force shall be under the command of the adjutant general.

Section 27. Section **39A-4-103**, which is renumbered from Section 39-4-9 is renumbered and amended to read:

~~[39-4-9].~~ **39A-4-103. Qualifications of members.**

~~[No person shall]~~ An individual may not be commissioned or enlisted in ~~[such forces]~~ the Defense Force who:

(1) is not a citizen of the United States; or [who]

(2) has been expelled or dishonorably discharged from any military [or naval organization of this state, or of another state, or of the United States] service.

Section 28. Section **39A-4-104**, which is renumbered from Section 39-4-11 is renumbered and amended to read:

~~[39-4-11].~~ **39A-4-104. Term of force enlistment -- Oaths.**

~~[A person]~~ (1) An individual may not be enlisted in the Defense Force for more than

803 one year, but an enlistment may be renewed.

804 (2) The oath to be taken upon enlistment in the [~~forces~~] Defense Force shall be
805 substantially in the form prescribed for enlisted [~~men~~] individuals of the National Guard,
806 substituting the words, "Utah State Defense Force," where necessary.

807 Section 29. Section ~~39A-4-105~~, which is renumbered from Section 39-4-10 is
808 renumbered and amended to read:

809 ~~[39-4-10].~~ **39A-4-105. Oaths of force officers.**

810 The oath to be taken by officers commissioned in the [~~forces~~] Defense Force shall be
811 substantially in the form prescribed for officers of the National Guard, but substituting the
812 words "Utah State Defense Force," where necessary.

813 Section 30. Section ~~39A-4-106~~, which is renumbered from Section 39-4-3 is
814 renumbered and amended to read:

815 ~~[39-4-3].~~ **39A-4-106. Compensation of force members.**

816 (1) [~~Every member~~] Members of the Utah State Defense Force, when called into active
817 service by the governor, shall receive compensation as prescribed by the governor.

818 (2) The compensation may not exceed the rate of pay [~~under law~~] prescribed for
819 officers and other members of the National Guard when called into active service of the state
820 by the governor.

821 Section 31. Section ~~39A-4-107~~, which is renumbered from Section 39-4-8 is
822 renumbered and amended to read:

823 ~~[39-4-8].~~ **39A-4-107. No organizations to be enlisted as a unit.**

824 [~~No~~] A civil organization, society, club, post, order, fraternity, association, brotherhood,
825 body, union, league, or other combination of [~~persons~~] individuals or civil group [~~shall be~~
826 ~~enlisted in such forces~~] may not enlist in the Defense Force as an organization, detachment,
827 company, or unit.

828 Section 32. Section ~~39A-4-108~~, which is renumbered from Section 39-4-5 is
829 renumbered and amended to read:

830 ~~[39-4-5].~~ **39A-4-108. Service outside state prohibited -- Exceptions.**

831 [~~Such forces shall~~] (1) The Defense Force may not be required to serve outside the
832 boundaries of this state [~~except: (1) Upon the request of the governor of another state,~~] unless
833 the governor [~~of this state may, in his discretion, order any portion or all of such forces to assist~~

the military or police forces of such other state who are actually engaged in defending such other state. Such forces], in response to a request from the governor of another state through the Emergency Management Assistance Compact, orders the Defense Force to assist outside the state.

(2) The Defense Force may be recalled by the governor at [his discretion] any time.

~~[(2) Any organization, unit or detachment of such forces, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces beyond the borders of this state into another state until they are apprehended or captured by such organization, unit or detachment or until the military or police forces of the other state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons; provided, such other state shall have given authority by law for such pursuit by such forces of this state. Any such person who shall be apprehended or captured in such other state shall without unnecessary delay be surrendered to the military or police forces of the state in which he is taken or to the United States, but such surrender shall not constitute a waiver by this state of its right to extradite or prosecute such persons for any crime committed in this state.]~~

Section 33. Section 39A-4-109, which is renumbered from Section 39-4-12 is renumbered and amended to read:

~~[39-4-12].~~ **39A-4-109. Military court law and rules of National Guard applicable.**

~~[(1)]~~ When the ~~[forces]~~ Defense Force or any part of ~~[them are]~~ it is ordered ~~[out for]~~ to active service ~~[or are serving as members of the Utah State Defense Force, the]~~ Chapter 5, Utah Code of Military Justice, as it applies to the ~~[state]~~ National Guard, and regulations prescribed under it apply to the Utah State Defense Force.

~~[(2) Members of the Utah State Defense Force are privileged from arrest under Section 39-1-54, when in state service.]~~

~~[(3) Persons serving in the Utah State Defense Force are, during this service, exempt from posse comitatus and from jury duty.]~~

Section 34. Section 39A-4-110, which is renumbered from Section 39-4-7 is renumbered and amended to read:

~~[39-4-7].~~ **39A-4-110. State Defense Force not subject to United States military**

service -- **Members not exempt from United States military service.**

~~[Nothing in this act shall]~~ (1) This act may not be construed as authorizing ~~[such forces, or any part thereof]~~ the Defense Force to be called, ordered or in any manner drafted, as such into the military service of the United States~~[, but no person shall]~~.

~~(2) An individual is not, by reason of [his] enlistment or commission in [any such forces be]~~ the Defense Force, exempted from military service under any law of the United States.

Section 35. Section **39A-4-111**, which is renumbered from Section 39-4-4 is renumbered and amended to read:

~~[39-4-4].~~ **39A-4-111. Governor may requisition arms and equipment from secretary of defense.**

For the use of ~~[such forces]~~ the Defense Force, the governor is authorized to requisition from the secretary of ~~[war such arms]~~ defense arms, ammunition, and equipment ~~[as may be in possession of and can be spared by the war department;]~~ and to make the facilities and equipment of the National Guard available to ~~[such forces the facilities of state armories and their equipment and such other state premises and property as may be available]~~ the Defense Force.

Section 36. Section **39A-4-112**, which is renumbered from Section 39-1-8 is renumbered and amended to read:

~~[39-1-8].~~ **39A-4-112. Governor may proclaim martial law.**

(1) Whenever the ~~[militia]~~ Defense Force or any portion ~~[thereof;]~~ of the Defense Force is called into active service, the governor may, by proclamation, declare all or any part of any county, city or town in which the troops are serving to be under martial law~~[, and when]~~.

(2) When the ~~[militia shall be on]~~ Defense Force is in active service ~~[as herein provided]~~, the commanding officer ~~[thereof]~~ and his subordinates may cooperate with the civil authorities ~~[or take entire charge of the situation as in the judgment of the commanding officer the exigencies of the case may require]~~ as directed by the adjutant general.

Section 37. Section **39A-5-101**, which is renumbered from Section 39-6-1 is renumbered and amended to read:

~~[39-6-1].~~ **39A-5-101. Utah Code of Military Justice.**

~~[This chapter is known as the "Utah Code of Military Justice," and may also be cited]~~

896 The "Utah Code of Military Justice" may be abbreviated as the "UtCMJ[:]" and applies to all
897 individuals subject to this title.

898 Section 38. Section **39A-5-102**, which is renumbered from Section 39-6-2 is
899 renumbered and amended to read:

900 ~~[39-6-2].~~ **39A-5-102. Definitions.**

901 As used in this chapter:

902 (1) "Accuser" means ~~[a person]~~ an individual who:

903 (a) signs and swears to charges;

904 (b) directs that charges nominally be signed and sworn to by another; or

905 (c) any other ~~[person]~~ individual who has an interest other than an official interest in
906 the prosecution of the accused.

907 (2) "Apprehend" means taking an individual into custody by competent authority, with
908 or without a warrant.

909 (3) "Arrest" means restraining an individual by an order, not imposed as a punishment
910 for an offense, directing the individual to remain within a specified area.

911 ~~[(2)]~~ (4) "Commanding officer" means both a commissioned officer and a warrant
912 officer designated as a commander.

913 ~~[(3)]~~ (5) "Commissioned officer" includes a commissioned warrant officer.

914 (6) "Confinement" means the physical restraint of an individual.

915 ~~[(4)]~~ (7) "Convening authority" means the governor or the adjutant general.

916 ~~[(5)]~~ (8) "Duty status other than state active duty" means any other type of duty, and
917 includes going to and returning from the duty.

918 ~~[(6)]~~ (9) "Enlisted member" means ~~[a person]~~ an individual in an enlisted grade.

919 ~~[(7)]~~ (10) "Grade" means a step or degree in a graduated scale of office or military
920 rank, established and designated as a grade by law or regulation.

921 ~~[(8)]~~ (11) "Legal officer" means any commissioned officer of the ~~[organized]~~ National
922 Guard ~~[of the state]~~ designated to perform legal duties for a command.

923 ~~[(9)]~~ (12) "Major command" or "MACOM" means a major subdivision of the ~~[Utah]~~
924 National Guard.

925 ~~[(10)]~~ (13) "Military" means any or all of the armed forces of the United States.

926 ~~[(11)]~~ (14) "Military court" means a court-martial, a court of inquiry, or a provost

927 court.

928 ~~[(12)]~~ (15) "Military judge" means a qualified staff judge advocate officer of a military
 929 court detailed under Section ~~[39-6-20]~~ 39A-5-206.

930 ~~[(13)]~~ (16) "National Guard" ~~[means the Utah Army and Air National Guard,~~
 931 ~~including]~~ includes part-time and full-time active guard and reserve (AGR), and ~~[includes]~~ the
 932 Utah ~~[unorganized militia]~~ State Defense Force when called to active duty by the governor ~~[of~~
 933 ~~the state]~~.

934 ~~[(14)]~~ (17) "Officer" means a commissioned or warrant officer.

935 ~~[(15)]~~ (18) "Rank" means the order of precedence among members of the armed forces.

936 ~~[(16)]~~ (19) "State active duty" means full-time duty in the active military service of the
 937 state under an order of the governor, issued pursuant to the governor's authority, and includes
 938 going to and returning from ~~[the]~~ duty.

939 ~~[(17)]~~ (20) "State judge advocate" or "SJA" means the commissioned judge advocate
 940 general's corps officer responsible for supervising the delivery of legal services in the National
 941 Guard.

942 ~~[(18)]~~ (21) "State staff judge advocate" or "SSJA" means the commissioned judge
 943 advocate general's corps officer appointed as the senior legal officer for the ~~[Utah]~~ National
 944 Guard.

945 ~~[(19)]~~ (22) "Superior commissioned officer" means a commissioned officer superior to
 946 another in rank or command.

947 ~~[(20) "UtCMJ" means Title 39, Chapter 6, Utah Code of Military Justice.]~~

948 (23) "Unit" means any regularly organized command of the National Guard.

949 Section 39. Section **39A-5-103**, which is renumbered from Section 39-6-6 is
 950 renumbered and amended to read:

951 ~~[39-6-6].~~ **39A-5-103. State judge advocate -- Appointment -- Qualifications --**
 952 **Duties -- Assistants.**

953 (1) The adjutant general shall appoint an officer of the National Guard as the state
 954 judge advocate. The officer shall be a member of the Utah State Bar, a United States federal
 955 court, branch qualified, and designated as a staff judge advocate officer.

956 (2) The state judge advocate is the principal military legal advisor and shall, in
 957 connection with rendering legal advice to the adjutant general, prepare pretrial advice, a

post-trial review, and act as legal advisor to the adjutant general on all matters involving military justice[~~-, the Utah Manual for Military Courts, and the Utah Code of Military Justice~~].

(3) The adjutant general may appoint assistant state judge advocates as considered necessary. ~~[They]~~ All assistant state judge advocates shall be officers of the National Guard, members of the Utah State Bar, branch qualified, and designated as staff judge advocate officers.

(4) The SJA or an assistant SJA shall make frequent inspections of military units throughout the state to supervise the administration of military justice.

(5) The convening authority shall review directly with the SJA all matters relating to the administration of military justice and administrative actions. The assistant state judge advocate or legal officer of any command may communicate directly with the assistant state judge advocate or legal officer of a superior or subordinate command, or with the SJA.

(6) ~~[A person]~~ An individual who has acted as a member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense, may not subsequently act as assistant state judge advocate, SJA, or legal officer to any reviewing authority upon the same case.

Section 40. Section ~~39A-5-104~~, which is renumbered from Section 39-6-3 is renumbered and amended to read:

~~[39-6-3]~~. 39A-5-104. Individuals subject to chapter -- Jurisdiction over offenses.

(1) The following ~~[persons]~~ individuals are subject to this chapter:

(a) all members of the National Guard, including full-time members serving under Title 32, United States Code; and

(b) all other ~~[persons]~~ individuals lawfully ordered to duty in or with the National Guard or the ~~[unorganized militia]~~ Utah State Defense Force, from the ~~[dates they are]~~ date required by the terms of the order or other directive~~[s]~~.

(2) (a) If there is a military activation by the federal government, all activated ~~[persons]~~ individuals who would otherwise be under the jurisdiction of this chapter are subject to concurrent jurisdiction under federal and state law.

(b) ~~[Persons]~~ Individuals under this subsection may only be tried for offenses occurring

during activation and after release from federal service, while within the period of ~~an~~ the applicable statute of limitations.

Section 41. Section **39A-5-105**, which is renumbered from Section 39-6-5 is renumbered and amended to read:

~~[39-6-5].~~ **39A-5-105. Application of chapter in and outside of the state -- Military courts held outside the state.**

(1) This chapter applies to all ~~[persons]~~ individuals:

(a) subject to this chapter within the state; ~~[and]~~

(b) otherwise subject to this chapter while serving outside the state~~[-];~~ and

(c) while going to and returning from the service outside the state~~[, as if they were serving inside the state].~~

(2) Military courts may be convened and held in units of the National Guard while those units are serving without the state, with the same jurisdiction and powers as to ~~[persons]~~ individuals subject to this chapter as if the proceedings were held within the state. Offenses committed without the state may be tried and punished either within or without the state, as military necessity dictates.

(3) Nothing in this chapter limits a commander's authority to use adverse administrative action to address misconduct by a member, regardless of the member's status at the time of the misconduct.

Section 42. Section **39A-5-106**, which is renumbered from Section 39-6-40 is renumbered and amended to read:

~~[39-6-40].~~ **39A-5-106. Offenses against the state by individual not subject to chapter.**

~~[A person]~~ An individual not subject to this chapter is guilty of an offense against the state if ~~[he]~~ the individual willfully neglects or refuses to appear, refuses to qualify as a witness or to testify, or refuses to produce any evidence which ~~[that person]~~ the individual may have been legally subpoenaed to produce, after ~~[he]~~ the individual has been:

(1) subpoenaed to appear as a witness or to produce books and records before a military court or before any military or civil officer designated to take a deposition to be read in evidence before the court; and

(2) paid or tendered the fees and mileage of a witness at the rates allowed to witnesses

attending the district courts of the state.

Section 43. Section **39A-5-107**, which is renumbered from Section 39-6-7 is renumbered and amended to read:

~~[39-6-7].~~ **39A-5-107. Apprehension.**

~~[(1) "Apprehension" means the taking of a person into custody by competent authority, with or without a warrant.]~~

~~[(2) A person]~~ (1) An individual authorized under this chapter or rules ~~[made under it]~~ promulgated pursuant to this chapter to apprehend ~~[persons]~~ individuals subject to this chapter, any provost marshal of a military court appointed under this chapter, and any peace officer authorized by law, may apprehend ~~[persons]~~ individuals subject to this chapter upon probable cause to believe that an offense has been committed and the ~~[person]~~ individual to be apprehended committed the offense.

~~[(3)]~~ (2) Commissioned officers, warrant officers, and noncommissioned officers may quell disorderly conduct among ~~[persons]~~ individuals subject to this chapter and may apprehend those ~~[persons]~~ individuals who are taking part.

Section 44. Section **39A-5-108**, which is renumbered from Section 39-6-8 is renumbered and amended to read:

~~[39-6-8].~~ **39A-5-108. Arrest.**

~~[(1) "Arrest" means the restraint of a person by an order, not imposed as a punishment for an offense, directing the person to remain within a specified area.]~~

~~[(2)]~~ (1) An enlisted service member may be ordered into arrest or confinement by any commanding officer by an order, oral or written, delivered in person or through ~~[persons]~~ individuals subject to this chapter, or through ~~[a person]~~ an individual authorized by this chapter to apprehend ~~[persons]~~ individuals.

(2) A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted members of his or her command or subject to his or her authority into arrest or confinement.

(3) A commissioned officer or warrant officer may be ordered apprehended, or ordered into arrest or confinement, only by a commanding officer to whose authority ~~[he]~~ the commissioned officer or warrant officer is subject, and only by an order, oral or written, delivered in person or by another commissioned officer. The authority to order the ~~[person]~~

officer apprehended or into arrest or confinement may not be delegated.

(4) A ~~[person]~~ service member may not be apprehended or placed under arrest or confinement except upon probable cause.

(5) This section does not limit ~~[a person]~~ an individual authorized to apprehend offenders in ~~[his]~~ securing the custody of an alleged offender until the proper authority may be notified.

Section 45. Section **39A-5-109**, which is renumbered from Section 39-6-4 is renumbered and amended to read:

~~[39-6-4].~~ **39A-5-109. Fraudulently obtained discharge -- Desertion -- Limitations -- Tolling of time limits.**

(1) ~~[A person]~~ An individual discharged from the ~~[Utah]~~ National Guard who is later charged with having fraudulently obtained the discharge is subject to trial by a military court on that charge.

(2) After apprehension, the ~~[person]~~ individual is subject to this chapter while in military custody for trial. Upon conviction of ~~[that]~~ the charge the ~~[person]~~ individual is subject to trial for all offenses under this chapter committed prior to the fraudulent discharge.

(3) ~~[A person]~~ An individual who has deserted from a military unit, which ~~[act]~~ would subject the ~~[person]~~ individual to the jurisdiction of this chapter, is not relieved from the jurisdiction of this chapter due to a separation from any later period of service.

(4) An individual charged with desertion or absence without leave shall be tried and punished within four years after the preferral of charges.

(5) Except under Subsection (4), an individual charged with any offense may not be tried by a military court or punished under Section [39A-5-303](#) if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising jurisdiction as a military court convening authority.

(6) Periods when the accused was outside the state's jurisdiction or in the custody of civilian authorities are excluded in computing limitations of time under this section.

Section 46. Section **39A-5-110**, which is renumbered from Section 39-6-9 is renumbered and amended to read:

~~[39-6-9].~~ **39A-5-110. Confinement.**

~~[(1) "Confinement" means the physical restraint of a person.]~~

1082 ~~[(2)(a) A person]~~ (1) (a) An individual subject to this chapter, who is charged with an
1083 offense under this chapter, may be ordered into arrest or confinement, as circumstances require.

1084 (b) When ~~[a person]~~ an individual subject to this chapter is placed into arrest or
1085 confinement prior to trial, action shall be taken immediately to notify ~~[him]~~ the individual of
1086 the specific offense charged ~~[against him]~~, and to either try the ~~[person]~~ individual, or dismiss
1087 the charges ~~[against him]~~ and release ~~[him]~~ the individual.

1088 ~~[(3)]~~ (2) Confinement before, during, or after trial by a military court shall be ~~[in either~~
1089 ~~a guard house or a civilian jail, or other]~~ ordered by a field grade or general officer and may be
1090 in a penal [facility] institution determined by the governor or ~~[his designee]~~ the adjutant
1091 general.

1092 Section 47. Section **39A-5-111**, which is renumbered from Section 39-6-10 is
1093 renumbered and amended to read:

1094 ~~[39-6-10].~~ **39A-5-111. Parties under obligation to keep a prisoner -- Reporting.**

1095 (1) A provost marshal, ~~[commander of a guard, master at arms, warden, keeper,]~~
1096 sheriff, or officer of a city or county jail or ~~[other jail]~~ penal institution designated under
1097 Section ~~[39-6-9]~~ 39A-5-110, may not refuse to receive or keep any prisoner ~~[committed to his~~
1098 ~~charge]~~ if the committing ~~[person]~~ officer provides a signed statement ~~[signed by him,]~~
1099 indicating the offense charged against the prisoner.

1100 (2) Any party under Subsection (1) charged with keeping a prisoner shall within 24
1101 hours after ~~[that]~~ commitment ~~[or as soon as he is relieved from guard,]~~ report to the
1102 commanding officer of the prisoner the name of the prisoner, the nature of the offense charged
1103 against him, and the name of the ~~[person]~~ individual who ordered or authorized the
1104 commitment.

1105 Section 48. Section **39A-5-112**, which is renumbered from Section 39-6-11 is
1106 renumbered and amended to read:

1107 ~~[39-6-11].~~ **39A-5-112. Individual confined prior to trial -- Punishment**
1108 **limitations.**

1109 (1) Subject to Section ~~[39-6-9]~~ 39A-5-110, ~~[a person]~~ an individual in confinement
1110 prior to trial may not be subjected to punishment or penalty other than arrest or confinement
1111 ~~[upon]~~ while the charges are pending ~~[against him]~~.

1112 (2) The arrest or confinement imposed on a prisoner may not be more rigorous than

necessary to ensure the prisoner's presence. However, ~~[he]~~ the prisoner may be:

(a) subjected to minor punishment during that period for discipline violations; and

(b) required to perform labor as necessary for the policing and sanitation of ~~[his]~~ the prisoner's living ~~[quarters, mess facilities, and the area]~~ conditions, immediately adjacent ~~[to these]~~ areas, or as otherwise designated by regulations governing the housing of a prisoner.

Section 49. Section **39A-5-113**, which is renumbered from Section 39-6-12 is renumbered and amended to read:

~~[39-6-12].~~ **39A-5-113. Individual accused of offense against civilian -- Sentences of military and civilian courts.**

(1) ~~[Under this chapter, a person]~~ A service member on duty and subject to this chapter who is accused of an offense against a civilian ~~[person]~~ individual may be delivered, upon request, to ~~[the]~~ a civilian authority for judicial proceedings.

(2) (a) ~~[When a person]~~ If an individual under sentence imposed by a military court is delivered to a civilian authority under this section, and the ~~[person]~~ individual is convicted in a civilian court, the execution of the sentence of the military court is interrupted.

(b) After the ~~[person]~~ individual has completed the sentence imposed by the civilian court, upon request of military authority, ~~[he]~~ the individual shall be returned to military custody for completion of ~~[his]~~ the military court sentence.

Section 50. Section **39A-5-114**, which is renumbered from Section 39-6-23 is renumbered and amended to read:

~~[39-6-23].~~ **39A-5-114. Charges and specifications -- Contents -- Notification of accused.**

(1) Charges and specifications shall be signed by a ~~[person]~~ member subject to this chapter under oath before ~~[a person]~~ an individual authorized to administer oaths and shall state that:

(a) the ~~[person]~~ individual signing has personal knowledge of, or has investigated, the matters set forth in the document; and

(b) the matters set forth are true to the best of ~~[his]~~ the individual's knowledge and belief.

(2) (a) Upon the preferring of charges, the appropriate authority shall take action immediately to determine what disposition should be made in the interest of justice and

discipline.

(b) The accused shall be informed of the charges against him or her as soon as practicable.

Section 51. Section **39A-5-115**, which is renumbered from Section 39-6-24 is renumbered and amended to read:

[39-6-24]. 39A-5-115. Individual charged -- Limits on evidence obtained from other individuals.

(1) ~~[A person]~~ An individual subject to this chapter may not:

(a) compel any ~~[person]~~ individual to incriminate himself or herself or to answer any question, the answer to which may tend to incriminate ~~[him]~~ the individual;

(b) interrogate, or request any statement from an accused or ~~[a person]~~ an individual suspected of an offense, without first:

(i) informing ~~[him]~~ the individual of the nature of the accusation; and

(ii) advising ~~[him that he is not required to make any]~~ the individual that a statement is not required regarding the offense of which ~~[he]~~ the individual is accused or suspected, and that any statement ~~[made by him]~~ may be used as evidence against ~~[him]~~ the individual in a trial by military court; and

(c) compel any ~~[person]~~ individual to make a statement or produce evidence before any military court, if the statement or evidence is not material to the issue before the court and may tend to degrade ~~[him]~~ the individual.

(2) A statement obtained from any ~~[person]~~ individual in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement may not be received in evidence against ~~[him]~~ the individual in a trial by a military court.

Section 52. Section **39A-5-116**, which is renumbered from Section 39-6-26 is renumbered and amended to read:

[39-6-26]. 39A-5-116. Charges to be forwarded to governor or adjutant general.

When ~~[a person]~~ an individual is held for trial by military court, the commanding officer shall forward the charges, together with the investigation and related papers, to the governor or the adjutant general within five working days, excluding holidays, after the accused is ordered into arrest or confinement.

Section 53. Section **39A-5-117**, which is renumbered from Section 39-6-27 is renumbered and amended to read:

~~[39-6-27].~~ 39A-5-117. Review of charge by SJA -- Corrections to charges.

(1) (a) Before directing the trial of any charge by a military court, the convening authority shall refer ~~[it]~~ the charge to the SJA for consideration and advice.

(b) The convening authority may not refer a charge to a military court for trial unless he or she has found that the charge alleges an offense under this chapter and is warranted by sufficient evidence, as indicated in the report of the investigation.

(2) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections and changes in the charges and specifications as necessary may be made to conform to the evidence.

Section 54. Section **39A-5-118**, which is renumbered from Section 39-6-28 is renumbered and amended to read:

~~[39-6-28].~~ 39A-5-118. Service of charges on accused.

(1) The trial counsel to whom charges are referred for trial shall cause to be served upon the accused a copy of the charges to be tried.

(2) ~~[A person]~~ An individual may not, against his or her objection, be brought to trial or be required to participate ~~[by himself or with counsel]~~ in a session called by the military judge under Section ~~[39-6-32]~~ 39A-5-216, in a military court case, within five days after the service of charges ~~[upon him]~~.

Section 55. Section **39A-5-119**, which is renumbered from Section 39-6-114 is renumbered and amended to read:

~~[39-6-114].~~ 39A-5-119. Chapter interpretation -- Federal law governs.

(1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the National Guard not inconsistent with the constitution and laws of this state or with a rule or regulation adopted pursuant to Section ~~[39-1-3]~~ 39A-3-102, apply to and govern the National Guard of this state, including all members on active duty within the state as active duty ~~[guard/reserve]~~ guard or reserve personnel under U.S.C.A. Title 32, National Guard.

(2) The Uniform Code of Military Justice, 10 U.S.C.A. 47, including regulations,

1206 manuals, forms, precedents, and usages implementing, interpreting and complementing the
1207 code, is adopted for use by the National Guard of this state and applies as long as it is not
1208 inconsistent with:

1209 (a) the constitution and laws of this state, including the regulations, manuals, forms,
1210 precedents, and usages implementing, interpreting, and complementing the constitution and
1211 laws of this state; or

1212 (b) a rule or regulation adopted pursuant to Section [~~39-1-3~~] 39A-3-102, to govern the
1213 National Guard of this state, including all members on active duty within the state as active
1214 duty [~~guard/reserve~~] guard or reserve personnel under U.S.C.A. Title 32, National Guard, when
1215 the members are serving other than in a federal capacity under U.S.C.A. Title 10.

1216 Section 56. Section **39A-5-201** is enacted to read:

1217 **39A-5-201. Military courts.**

1218 This part sets the requirements and procedures for the conduct of military courts of the
1219 Utah National Guard.

1220 Section 57. Section **39A-5-202**, which is renumbered from Section 39-6-15 is
1221 renumbered and amended to read:

1222 [~~39-6-15~~]. **39A-5-202. Composition -- Convening authority -- Responsibilities.**

1223 (1) [~~In~~] Within the National Guard [~~that is~~] while not in federal service, there is created
1224 a military court to hear matters designated under the [~~UtCMJ~~] Utah Code of Military Justice.

1225 (2) The governor or the adjutant general of the state is the convening authority for any
1226 military court in the state and upon receipt of charges may:

1227 (a) dismiss any charges;

1228 (b) forward charges to a subordinate commander for disposition; or

1229 (c) refer charges to a military court for trial.

1230 (3) A military court shall be convened in accordance with this part.

1231 [~~(2)~~] (4) The court shall be composed of:

1232 (a) a military judge and not fewer than three panel members; or

1233 (b) a military judge, if before the court is assembled, the accused, knowing the identity
1234 of the military judge and after consultation with his defense counsel, requests in writing a court
1235 composed only of a military judge, and the military judge approves the request.

1236 (5) The convening authority of a military court or court of inquiry:

(a) shall detail or employ qualified court reporters to record the proceedings of and testimony taken by the court; and

(b) may detail or employ interpreters, as necessary.

Section 58. Section **39A-5-203**, which is renumbered from Section 39-6-16 is renumbered and amended to read:

~~[39-6-16].~~ **39A-5-203. Jurisdiction -- Punishments.**

(1) (a) ~~[Subject to Subsections (2) and (3), a]~~ A military court in this state has jurisdiction to try ~~[persons]~~ individuals subject to this chapter for any offense punishable by this chapter.

(b) The military court may, under limitations the governor may prescribe, and under applicable state and federal regulations governing punishment, impose any punishment described in Section [39A-5-302](#) and not prohibited by this chapter or state law, including the issuance of a bad conduct discharge, when the court is in session to consider a penalty.

(2) Each major command component of the National Guard has military court jurisdiction over all ~~[persons]~~ individuals subject to this chapter. The exercise of this jurisdiction by one command component over members of another shall be in accordance with regulations prescribed by the governor.

(3) Members of the Utah National Guard ~~[or the unorganized militia]~~ in federal service are subject to the federal Uniform Code of Military Justice and all federal and state laws pertaining to them, until released back to state control.

(4) The jurisdiction of the courts established by this chapter is presumed, and the burden of proof shall rest on any individual attacking the court's jurisdiction in any action or proceeding.

Section 59. Section **39A-5-204**, which is renumbered from Section 39-6-109 is renumbered and amended to read:

~~[39-6-109].~~ **39A-5-204. Authority -- Processes and mandates.**

(1) A military court may issue all processes and mandates necessary to carry into effect the court's authority. ~~[The court may issue subpoenas duces tecum and enforce by attachment the attendance of witnesses and production of books and records, when they are in the state, and the courts are sitting in the state.]~~

(2) ~~[The processes]~~ Processes and mandates:

1268 (a) may be issued by a military court judge or the president of other military courts;
1269 (b) may be directed to and executed by the military police assigned to the court, or any
1270 peace officer; and

1271 (c) shall be in a form prescribed by regulations issued under this chapter.

1272 (3) (a) All officers to whom ~~[the]~~ processes or mandates are directed shall execute
1273 ~~[them]~~ and ~~[make]~~ return ~~[of their acts according to]~~ all actions in accordance with the
1274 requirements of the documents.

1275 (b) Except ~~[where]~~ as otherwise provided ~~[under]~~ in this chapter, an officer may not
1276 demand or require payment of any fee or charge for receiving, executing, or returning a process
1277 or mandate, or for any service in connection with either document.

1278 Section 60. Section **39A-5-205**, which is renumbered from Section 39-6-108 is
1279 renumbered and amended to read:

1280 ~~[39-6-108].~~ **39A-5-205. Execution of military court processes and sentences.**

1281 The processes and sentences of the National Guard in its military court, when the guard
1282 is not in federal service, shall be executed by the civil officers prescribed by state law.

1283 Section 61. Section **39A-5-206**, which is renumbered from Section 39-6-20 is
1284 renumbered and amended to read:

1285 ~~[39-6-20].~~ **39A-5-206. Military judge -- Qualifications -- Designation for detail.**

1286 (1) The ~~[authority]~~ convening authority of a military court shall, subject to regulations
1287 ~~[made]~~ promulgated by the governor, detail a military judge, as designated by the state judge
1288 advocate, to preside over each open session of the court.

1289 (2) A military judge shall be:

1290 (a) a commissioned officer;

1291 (b) a member of the Utah State Bar;

1292 (c) a member of the bar of a federal court; and

1293 (d) certified as qualified for ~~[this]~~ duty by the state judge advocate.

1294 ~~[(3) (a) The military judge of a military court shall be designated by the state judge~~
1295 ~~advocate or the SJA's designee for detail by the convening authority.]~~

1296 ~~[(b)]~~ (3) Unless the military court ~~[was]~~ is convened by the governor, neither the
1297 adjutant general nor the adjutant general's staff may prepare or review any report concerning
1298 the effectiveness, fitness, or efficiency of the detailed military judge that relates to the judge's

1299 performance of duty as a military judge.

1300 (4) ~~[A person]~~ An individual is not eligible to act as a military judge in a case if the
1301 ~~[person]~~ individual:

1302 (a) is the accuser;

1303 (b) is a witness in the case;

1304 (c) has acted as investigating officer; or

1305 (d) is a counsel in the same case.

1306 (5) The military judge of a court may not:

1307 (a) consult with the members of the court, except in the presence of the accused, trial
1308 counsel, and defense counsel; or

1309 (b) vote with the members of the court.

1310 Section 62. Section **39A-5-207**, which is renumbered from Section 39-1-41.5 is
1311 renumbered and amended to read:

1312 ~~[39-1-41.5].~~ **39A-5-207. Authority of military court judges -- Payment of**
1313 **witnesses.**

1314 (1) Judges of military courts may:

1315 (a) issue a warrant ~~[to]~~ for the arrest of an accused ~~[person and bring him before the~~
1316 ~~court for trial, when the person has failed to obey a prior summons to appear before the court,~~
1317 ~~and a copy of the charge or information has been delivered to the accused with the summons]~~
1318 individual who, having been served with a warrant and a copy of the charges, disobeys a
1319 written order by the convening authority to appear before the court;

1320 (b) issue subpoenas and subpoenas duces tecum, and enforce by attachment the
1321 attendance of witnesses and the production of books and papers;

1322 (c) sentence for a refusal to be sworn or to answer as provided in actions before civil
1323 courts; and

1324 (d) issue process to compel witnesses to appear and testify, and compel the production
1325 of other evidence in any county within the state.

1326 (2) Witnesses shall be paid in the same manner as in district courts.

1327 Section 63. Section **39A-5-208**, which is renumbered from Section 39-6-19 is
1328 renumbered and amended to read:

1329 ~~[39-6-19].~~ **39A-5-208. Individuals who may serve on a military court.**

(1) A commissioned officer off or on duty with the National Guard may serve on a military court for the trial of any ~~[person]~~ individual brought before the court for trial.

(2) A warrant officer off or on duty with the National Guard may serve on a military court for the trial of any ~~[person]~~ individual, other than a superior commissioned officer, who is brought before the court for trial.

(3) (a) An enlisted member of the National Guard who is not a member of the same unit as the accused may serve on a military court for the trial of any enlisted member brought before the court for trial.

(b) However, an enlisted member may serve as a member of a court only if before the conclusion of a session called by the court under Section ~~[39-6-32]~~ 39A-5-216, or in the absence of the session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on the court.

(c) If the request is made under Subsection (3)(b), the accused may not be tried by the military court when enlisted members comprise less than 1/2 of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies.

(d) If ~~[the]~~ eligible members cannot be obtained, the court may be assembled and trial held without them, but the convening authority shall make a detailed written explanation of why ~~[they]~~ eligible members could not be obtained. This statement shall be appended to the court record.

~~[(e) "Unit" means any regularly organized major command (MACOM) of the National Guard.]~~

(4) (a) ~~[A person]~~ An individual subject to this chapter ~~[shall]~~ may be tried by a military court, but no member of the court may be junior to ~~[him]~~ the individual in rank or grade.

(b) When ~~[an authority convenes]~~ a military court~~[-it]~~ is convened, the convening authority shall detail as members of the court ~~[those persons]~~ individuals who ~~[in his opinion]~~ are best qualified for the duty by age, education, training, experience, length of service, and judicial temperament.

(c) A member is not eligible to serve as a member of a military court ~~[when he]~~ if the member:

(i) is the accuser ~~[or]~~ in the case;

(ii) is a witness in the case ~~[or]~~;

(iii) has acted as investigating officer in the case; or

(iv) has acted as counsel in the ~~[same]~~ case.

(5) An action or proceeding may not be prosecuted or maintained against a convening authority, member of a military court, or individual acting under the court's authority or reviewing the court's proceedings because of:

(a) the imposition, approval, or execution of any sentence;

(b) the imposition or collection of a fine or penalty; or

(c) the execution of any warrant, writ, execution, process, or mandate of a military court.

Section 64. Section **39A-5-209**, which is renumbered from Section 39-6-30 is renumbered and amended to read:

~~[39-6-30].~~ 39A-5-209. Military court findings -- Prohibition of censuring or influencing court actions -- Military court member's performance.

~~[(1) An authority convening a military court, or any other commanding officer, or officer serving on the staff of any of these persons, may not censure, reprimand, or admonish the court or any member, military judge, or counsel of the court, with respect to the findings or sentence adjudged by the court, or any other function carried out in the proceeding.]~~

(1) The court or any panel member, military judge, or counsel of the court may not be censured, reprimanded, or admonished by a convening authority, commanding officer, or staff officer with respect to the findings or sentence adjudged by the court, or any other function carried out in the proceeding.

(2) ~~[A person]~~ An individual subject to this chapter may not attempt to coerce, or by any unauthorized means influence the action of:

(a) the military court or any other military tribunal or any member of ~~[these in their]~~ a military tribunal arriving at the findings or sentence in any case; or

(b) any convening, approving, or reviewing authority with respect to ~~[his]~~ any judicial acts.

(3) Subsection (2) does not apply to:

(a) general instructional or informational courses in military justice, if the courses are

designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of a military court; or

(b) statements and instructions given in open court by the military judge, the president of a military court, or counsel.

(4) In preparing an effectiveness, efficiency, or fitness report, or any other report or document used in whole or in part for determining whether a member of the National Guard is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the National Guard, or in determining whether a member should be retained in an active status, ~~[a person]~~ an individual subject to this chapter may not:

(a) consider or evaluate the performance of duty of any member of a military court; or

(b) give a less favorable rating or evaluation of any member of the National Guard because of the zeal with which the member, as counsel, represented any accused before a military court or before any other proceeding authorized by this chapter.

Section 65. Section **39A-5-210**, which is renumbered from Section 39-6-31 is renumbered and amended to read:

~~[39-6-31].~~ **39A-5-210. Prosecutions in state name -- Right to defense trial counsel.**

(1) The trial counsel of a military court prosecutes in the name of the state, and shall prepare the record of the proceedings under the direction of the court.

(2) (a) The accused has the right to be represented ~~[in his defense]~~ before a military court by civilian counsel if provided by him at no expense to the state, or by military counsel of his or her own selection if reasonably available.

(b) If the accused has retained civilian counsel ~~[of his own choosing]~~, the defense counsel and any assistant defense counsel who were detailed shall act as the associate counsel to the civilian counsel ~~[for the accused]~~ if the accused desires. Otherwise, detailed counsel shall be excused by the military judge.

(3) In a court proceeding resulting in a conviction, the defense counsel may forward for attachment to the record of proceedings a brief of matters that should be considered on behalf of the accused on review, including any objection to the contents of the record.

(4) An assistant trial counsel of a military court may, under the direction of the trial counsel, or as trial counsel when he is so qualified, perform any duty imposed by law,

regulation, or the custom of the service on the trial counsel of the court. An assistant trial counsel of a military court may perform any duty of the trial counsel.

(5) An assistant defense counsel of a military court may, under the direction of the defense counsel or when he is qualified to be the defense counsel, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

Section 66. Section **39A-5-211**, which is renumbered from Section 39-6-29 is renumbered and amended to read:

[39-6-29]. 39A-5-211. Court procedures -- Regulations by governor.

(1) In cases subject to or brought under this chapter, before military courts, or before other military tribunals, the procedure, including elements of proof, may be prescribed by the governor ~~[by regulations]~~.

(2) The ~~[regulations shall, as the]~~ governor ~~[considers practicable,]~~ shall promulgate regulations that apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the state. However, the regulations may not be contrary to or inconsistent with this chapter.

Section 67. Section **39A-5-212**, which is renumbered from Section 39-6-35 is renumbered and amended to read:

[39-6-35]. 39A-5-212. Military court -- Oath or affirmation.

(1) Before performing their respective duties, an oath or affirmation to perform all duties faithfully shall be administered to:

(a) military judges~~[;]~~;

(b) interpreters~~[;]~~;

(c) members of the court~~[;]~~;

(d) the trial counsel~~[;]~~;

(e) the assistant trial counsel~~[;]~~;

(f) the defense counsel~~[;]~~;

(g) the assistant defense counsel~~[;]~~; and

(h) court reporters ~~[shall take an oath or affirmation to perform their duties faithfully].~~

(2) (a) The governor shall prescribe by regulation:

(i) the oath or affirmation~~[;]~~;

(ii) the time and place of taking ~~[either of them,]~~ the oath or affirmation;

1454 (iii) the manner of recording the taking[;]; and

1455 (iv) whether the oath is to be taken for all cases in which these duties are to be
1456 performed or for a specific case.

1457 (b) The regulations may provide that an oath or affirmation to faithfully perform any of
1458 the duties under Subsection (1) except that of court reporter, be taken at any time by any judge
1459 advocate, legal officer, or other [~~person~~] individual certified as qualified or competent for the
1460 duty. The regulations may also provide that an oath under this subsection need not again be
1461 taken at the time the judge advocate, legal officer, or other [~~person~~] individual having taken an
1462 oath under this section is detailed to that duty.

1463 [~~(c)~~] (3) Each witness in a military court shall be examined [~~on~~] under oath or
1464 affirmation.

1465 Section 68. Section **39A-5-213**, which is renumbered from Section 39-6-34 is
1466 renumbered and amended to read:

1467 [~~39-6-34~~]. **39A-5-213. Military court -- Challenge for cause -- Peremptory**
1468 **challenge.**

1469 (1) The military judge and members of a military court may be challenged by the
1470 accused or the trial counsel for cause stated to the court. The military judge of the court shall
1471 determine the relevancy and validity of challenges for cause, and may not receive a challenge
1472 to more than one [~~person~~] member at a time. Challenges by the trial counsel shall be presented
1473 and decided before those by the accused are offered, unless the judge determines otherwise.

1474 (2) Each accused and the trial counsel are entitled to one peremptory challenge, but the
1475 military judge may not be challenged except for cause. The military judge in his or her
1476 discretion may grant additional peremptory challenges where appropriate.

1477 Section 69. Section **39A-5-214**, which is renumbered from Section 39-6-22 is
1478 renumbered and amended to read:

1479 [~~39-6-22~~]. **39A-5-214. Military court members -- When excused -- Trial**
1480 **procedure.**

1481 (1) A member of a military court may not be absent or excused after the court has been
1482 assembled for the trial of the accused, except because of physical disability, the result of a
1483 challenge, or for good cause by order of the convening authority.

1484 (2) (a) When a military court other than a court composed solely of a military judge is

reduced to fewer than four members, the trial may not proceed unless the convening authority details new members sufficient to provide not fewer than four members.

(b) When the new members have been sworn, the trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and the counsel for the prosecution and defense.

Section 70. Section **39A-5-215**, which is renumbered from Section 39-6-33 is renumbered and amended to read:

[39-6-33]. 39A-5-215. Military court -- Continuance.

The military judge may, upon good cause shown, grant a continuance to trial or defense counsel for a stated period of time, when a continuance appears to be just.

Section 71. Section **39A-5-216**, which is renumbered from Section 39-6-32 is renumbered and amended to read:

[39-6-32]. 39A-5-216. Military court -- Session -- Procedures.

(1) After the service of charges has been referred for trial to a military court composed of a military judge and panel members, the military judge may, subject to Section [39-6-28] 39A-5-118, call the court into session. The session shall be:

(a) made a part of the record~~;~~ and ~~[shall be]~~

(b) in the presence of the accused, the defense counsel, and the trial counsel.

(2) The session may be conducted without the presence of the panel members.

(3) A session under this subsection may be conducted for the following purposes:

(a) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(b) hearing and ruling upon any matter a military judge under this chapter may rule upon, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(c) holding the arraignment and receiving the pleas of the accused, if permitted by regulations ~~[prescribed]~~ promulgated by the governor or adjutant general; or

(d) performing any other procedural function that may be performed by the military judge under this chapter or under rules ~~[prescribed]~~ promulgated under Section [39-6-39] 39A-5-219 and which does not require the presence of the members of the court.

[~~(3)~~] (4) When the members of a military court deliberate or vote, only the members may be present.

(5) All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, and the military judge.

Section 72. Section **39A-5-217**, which is renumbered from Section 39-6-38 is renumbered and amended to read:

~~[39-6-38].~~ 39A-5-217. Plea of not guilty -- Accepted -- Withdrawn.

(1) A plea of not guilty shall be entered in the record, and the court shall proceed as though the accused ~~[had]~~ pleaded not guilty, if the accused:

- (a) after arraignment, makes an irregular pleading;
- (b) after a plea of guilty, raises a matter inconsistent with the plea;
- (c) has apparently entered the plea of guilty improvidently or through lack of understanding of its meaning and effect; or
- (d) fails or refuses to plead.

(2) (a) A plea of guilty by the accused may not be accepted to any charge or specification alleging an offense for which a determinate term of one year confinement may be imposed.

(b) If a plea of guilty has been accepted by the military judge, a finding of guilty, if permitted by regulations promulgated by the governor, shall be entered immediately without vote and constitutes the finding of the court.

(c) If the plea of guilty is withdrawn prior to announcement of the sentence, the proceedings shall continue as though the accused ~~[had]~~ pleaded not guilty.

Section 73. Section **39A-5-218**, which is renumbered from Section 39-6-41 is renumbered and amended to read:

~~[39-6-41].~~ 39A-5-218. Contempt -- Penalty.

(1) A military court may punish for contempt any ~~[person]~~ individual who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any disorderly conduct.

(2) The punishment may not exceed confinement for three days in the county jail of the county where the proceedings are held, or a fine of \$200, or both.

Section 74. Section **39A-5-219**, which is renumbered from Section 39-6-39 is renumbered and amended to read:

[39-6-39]. 39A-5-219. Obtaining evidence and witnesses -- Procedure.

~~[(1)]~~ The trial and defense counsel, and the military court, have equal opportunity to obtain witnesses and other evidence under:

(1) regulations promulgated by the governor~~;~~ or adjutant general~~[-or]~~;

(2) the applicable rules of civil and criminal procedure; or

(3) state or federal law ~~[prescribe]~~.

~~[(2) The military court judge may:]~~

~~[(a) issue a warrant for the arrest of any accused person who, having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;]~~

~~[(b) issue subpoenas duces tecum and other subpoenas;]~~

~~[(c) enforce by attachment the attendance of witnesses and the production of books and papers; and]~~

~~[(d) sentence for refusal to be sworn or to answer, as under civil procedure.]~~

~~[(3) Process issued in a military court to compel witnesses to appear and testify and to compel the production of other evidence may be served within the boundaries of the state.]~~

Section 75. Section **39A-5-220**, which is renumbered from Section 39-6-42 is renumbered and amended to read:

[39-6-42]. 39A-5-220. Depositions -- Procedure.

(1) After charges have been signed under Section ~~[39-6-23]~~ 39A-5-114, any party may take oral or written depositions unless the military judge hearing the case, or if the case is not being heard, an authority competent to convene a military court for the trial of ~~[those]~~ the charges prohibits the depositions for good cause.

(2) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(3) Depositions may be taken before and authenticated by any military or civil officer authorized to administer oaths under state law or the law of the jurisdiction where the deposition is to be taken ~~[to administer oaths]~~.

(4) An authenticated deposition, taken upon reasonable notice to the other parties, may

be read in evidence, to the extent it is admissible under the rules of evidence, before any military court or any proceeding before a court of inquiry, if ~~[it appears to the court]:~~

(a) the witness resides or is beyond the state in which the military court or court of inquiry is ordered to sit, or beyond the distance of 100 miles from the location of the trial or hearing;

(b) the witness due to death, age, illness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the location of the trial or hearing;

(c) the present location of the witness is unknown; or

(d) the deposition was taken in the physical presence of the accused.

Section 76. Section **39A-5-221**, which is renumbered from Section 39-6-43 is renumbered and amended to read:

~~[39-6-43].~~ **39A-5-221. Sworn testimony -- Read in evidence.**

(1) The sworn testimony of a case which is contained in the authenticated record of proceedings of a court of inquiry, of ~~[a person]~~ an individual whose oral testimony cannot be obtained, may be read in evidence by any party before a military court if:

(a) the sworn testimony is otherwise admissible under the rules of evidence;

(b) the accused was a party before the court of inquiry;

(c) the same issue was involved or the accused consents to the introduction of the evidence; or

(d) the accused was physically present when the testimony was taken.

(2) The testimony may be read in evidence:

(a) before a court of inquiry or a military board; or

(b) by the defense only in cases extending to the dismissal of a commissioned officer.

Section 77. Section **39A-5-222**, which is renumbered from Section 39-6-44 is renumbered and amended to read:

~~[39-6-44].~~ **39A-5-222. Voting by military court members -- Procedure -- Presumption of innocence -- Reasonable doubt -- Burden of proof.**

~~[(1)(a) Voting by members of a military court on the findings and on the sentence, and upon questions of challenge, are by secret written ballot.]~~

~~[(b) The junior member of the court counts the votes.]~~

1609 ~~[(c) The count shall be reviewed by the president, who shall immediately announce the~~
1610 ~~result of the ballot to the members of the court.]~~

1611 ~~[(2)]~~ (1) (a) The military judge shall rule upon all questions of law and all interlocutory
1612 questions arising during the proceedings.

1613 (b) A ruling made by the military judge upon a question of law or an interlocutory
1614 question, other than the factual issue of mental responsibility of the accused, is final and is the
1615 ruling of the court. However, the military judge may change the ruling at any time during the
1616 trial.

1617 ~~[(3)]~~ (2) Before a vote is taken on the findings, the military judge shall, in the presence
1618 of the accused and counsel, instruct the court as to the elements of the offense and charge the
1619 court that:

1620 (a) the accused ~~[must be]~~ is presumed innocent until ~~[his]~~ guilt is established by legal
1621 and competent evidence beyond reasonable doubt;

1622 (b) if there is reasonable doubt as to the guilt of the accused, the doubt shall be
1623 resolved in favor of the accused, and ~~[he]~~ the accused shall be acquitted;

1624 (c) if there is a reasonable doubt as to the degree of guilt, the finding ~~[must]~~ shall be in
1625 a lower degree, as to which there is no reasonable doubt; and

1626 (d) the burden of proof to establish the guilt of the accused beyond a reasonable doubt
1627 is on the state.

1628 (3) (a) Voting by members of a military court on the findings and on the sentence, and
1629 upon questions of challenge, are by secret written ballot.

1630 (b) The junior member of the court counts the votes.

1631 (c) The count shall be reviewed by the president, who shall immediately announce the
1632 result of the ballot to the members of the court.

1633 ~~(4) (a) [Subsections (1), (2), and (3) do not apply to a court]~~ If the court is composed of
1634 a military judge only, [as] the military judge [of a court] determines all questions of law and
1635 fact arising during the proceedings. If the accused is convicted, the judge imposes the sentence.

1636 (b) The military judge of a court shall make a general finding and shall ~~[in addition],~~
1637 on request, find the facts specially.

1638 (c) If an opinion or memorandum of decision is filed, it is sufficient if the findings of
1639 fact are included.

Section 78. Section **39A-5-223**, which is renumbered from Section 39-6-45 is renumbered and amended to read:

~~[39-6-45].~~ **39A-5-223. Vote necessary for conviction or other questions -- Tie votes.**

(1) ~~[A person]~~ The accused may not be convicted of any offense except by a unanimous verdict of the members of the court present at the time the vote is taken.

(2) ~~[(a)]~~ All other questions decided by the members of a military court are determined by a majority vote. ~~[However, a]~~ A determination to reconsider a finding of guilty, to reconsider a sentence, or to decrease ~~[it]~~ a sentence, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

~~[(b)]~~ (3) (a) A tie vote on a challenge disqualifies the member challenged.

(b) A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused.

(c) A tie vote on any other question is a determination in favor of the accused.

Section 79. Section **39A-5-224**, which is renumbered from Section 39-6-46 is renumbered and amended to read:

~~[39-6-46].~~ **39A-5-224. Findings -- Background check prior to sentencing.**

(1) A court shall announce its findings and sentence to the parties as soon as determined.

(2) The court panel may defer sentencing pending an investigation of the background of the accused to determine a just and appropriate sentence.

Section 80. Section **39A-5-225**, which is renumbered from Section 39-6-52 is renumbered and amended to read:

~~[39-6-52].~~ **39A-5-225. Finding or sentence -- Error -- Review.**

(1) A finding or sentence of a military court may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(2) A reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm that portion of the finding that includes a lesser included offense.

Section 81. Section **39A-5-226**, which is renumbered from Section 39-6-47 is renumbered and amended to read:

[39-6-47]. 39A-5-226. Military court records.

(1) (a) Each military court shall maintain a separate record of the proceedings in each case brought before it. ~~[The]~~ Each record shall be authenticated by the signature of the military judge.

(b) (i) If the record cannot be authenticated by the military judge due to ~~[his]~~ death, disability, or absence, it shall be authenticated by the signature of the trial counsel.

(ii) If the trial counsel is unable to authenticate due to ~~[his]~~ death, disability, or absence, a member of the court panel shall authenticate the record by ~~[his]~~ signature.

(c) In a court of only a military judge, the record shall be authenticated by the court reporter under the same conditions that a member of a court would authenticate under this section~~;~~:

(i) if the proceedings have resulted in an acquittal of all charges and specifications~~;~~ or~~;~~ if]

(ii) if the proceedings are not affecting a general or flag officer, ~~[in]~~ for a sentence that does not ~~[including]~~ include a discharge and is not in excess of that which may be prescribed by regulations of the governor.

(2) A copy of the record of the proceedings of each court shall be given to the accused as soon as it is authenticated.

(3) The expense in preparing and transmitting the record shall be by regulations prescribed by the governor or the adjutant general.

Section 82. Section **39A-5-227**, which is renumbered from Section 39-6-53 is renumbered and amended to read:

[39-6-53]. 39A-5-227. Trial record forwarded to convening authority.

After a trial by a military court, the record shall be forwarded to the convening authority, as the reviewing authority. Action on the record may be taken by the ~~[person who convened the court]~~ convening authority, a commissioned officer commanding at that time, a successor in command, or by the governor.

Section 83. Section **39A-5-228**, which is renumbered from Section 39-6-54 is renumbered and amended to read:

[39-6-54]. 39A-5-228. Convening authority refers record to SJA -- Opinion.

The convening authority shall refer the record of each military court to the SJA, who

shall submit a written opinion to the convening authority. If the final action of the court is an acquittal of all charges and specifications, the opinion is limited to questions of jurisdiction.

Section 84. Section **39A-5-229**, which is renumbered from Section 39-6-55 is renumbered and amended to read:

~~[39-6-55].~~ **39A-5-229. Specification dismissal -- No finding of not guilty --**

Procedure.

(1) If a specification before a military court has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(2) If there is an apparent error or omission in the record or the record shows improper or inconsistent action by a court martial regarding a finding or sentence, that may be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. However, the record may not be returned for:

(a) reconsideration of a finding of not guilty of any specification, or a ruling which amounts to a finding of not guilty;

(b) reconsideration of a finding of not guilty of any charge unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of a provision of this chapter; or

(c) increasing the severity of the sentence.

Section 85. Section **39A-5-230**, which is renumbered from Section 39-6-56 is renumbered and amended to read:

~~[39-6-56].~~ **39A-5-230. Rehearing ordered by convening authority -- Grounds --**

Procedure.

(1) (a) If the convening authority disapproves the findings and sentence of a military court ~~[he may, except if]~~, the convening authority may, unless there is a lack of sufficient evidence in the record to support the findings, order a rehearing, and ~~[shall]~~ state the reasons for disapproval.

(b) If ~~[he]~~ the convening authority disapproves the findings and sentence and does not order a rehearing, ~~[he shall dismiss]~~ the charges shall be dismissed.

(2) (a) Each rehearing shall take place before a military court composed of members

who are not members of the military court that ~~[first]~~ originally heard the case.

(b) At a rehearing, the accused may not be tried for any offense ~~[of]~~ for which ~~[he was found]~~ a verdict of not guilty was returned by the ~~[first]~~ original military court.

(3) A sentence imposed may not exceed or be more severe than the original sentence, unless based on a finding of guilty regarding an offense not considered on the merits in the original proceedings.

Section 86. Section **39A-5-231**, which is renumbered from Section 39-6-58 is renumbered and amended to read:

~~[39-6-58].~~ **39A-5-231. Convening authority review -- Action by governor final -- SJA review -- Appeal of final action.**

(1) When the governor is the convening authority, the governor's action on the review of a record of trial is final.

(2) The state judge advocate shall review the record of trial in each case prior to final action being taken.

(3) The SJA shall make a written review and recommendation on legal issues to the convening authority for ~~[its]~~ consideration prior to final action in any case.

(4) In a case subject to review by the SJA under this section, the SJA shall submit an opinion regarding any errors committed during the trial and an analysis of the legal effect of the error to the convening authority prior to ~~[its]~~ the convening authority's affirmation and action regarding the findings and sentence in the case.

(5) The convening authority may affirm only findings of guilty and the sentence or part of the sentence that:

(a) is correct in law and fact; and

(b) should be approved, based on the entire record and the advice of the SJA, and any rebuttal submitted by the accused or defense counsel.

(6) In considering the record, the convening authority may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the testimony of the witnesses.

(7) If the convening authority sets aside the findings and sentence:

(a) a rehearing may be ordered, except when the decision to set aside is based on a lack of sufficient evidence in the record to support the findings; or

1764 (b) if a rehearing is not ordered, the charges shall be dismissed.

1765 (8) (a) Final action approved by the convening authority may be appealed directly to
1766 the Utah Court of Appeals.

1767 (b) Notice of appeal shall be filed within 30 days after the final action has been taken
1768 by the convening authority.

1769 Section 87. Section **39A-5-232**, which is renumbered from Section 39-6-59 is
1770 renumbered and amended to read:

1771 ~~[39-6-59]~~. **39A-5-232. Military court sentence -- Execution by convening**
1772 **authority.**

1773 (1) Except under Sections ~~[39-6-17 and 39-6-58]~~ 39A-5-306 and 39A-5-231, a military
1774 court sentence may be ordered executed by the convening authority when approved ~~[by him]~~,
1775 unless suspended or deferred.

1776 (2) The convening authority ~~[shall, in his]~~ has discretion~~[:]~~ to approve the sentence or
1777 ~~[the]~~ a part or commuted form of the sentence.

1778 (3) After ~~[his]~~ approval, ~~[he]~~ the convening authority may suspend the execution of the
1779 sentence.

1780 Section 88. Section **39A-5-233**, which is renumbered from Section 39-6-61 is
1781 renumbered and amended to read:

1782 ~~[39-6-61]~~. **39A-5-233. Probation violation -- Hearing -- Counsel -- Execution of**
1783 **suspended sentence.**

1784 (1) Probation imposed as a result of a suspended sentence may be vacated by the
1785 convening authority.

1786 (2) (a) Before ~~[the vacation of the suspension of]~~ a suspended military court sentence
1787 may be vacated, the officer holding convening authority jurisdiction over the probationer shall
1788 hold a hearing on the alleged violation of probation.

1789 (b) The probationer shall be represented by counsel at the hearing.

1790 ~~[(2)]~~ (3) (a) The record of the hearing and the recommendation of the officer having
1791 jurisdiction shall be sent for action to:

1792 (i) the governor in cases involving a military court sentence of confinement~~[-and]; or~~

1793 (ii) in all other cases, to the commanding officer of the ~~[unit of the]~~ National Guard
1794 unit of which the probationer is a member~~[-in all other cases]~~.

(b) If the governor or commanding officer vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.

~~[(3)]~~ (4) The suspension of any other sentence may be vacated by any authority for the command in which the accused is serving or assigned that is competent to convene~~[-for the command in which the accused is serving or assigned,]~~ a court that imposed the sentence.

Section 89. Section **39A-5-234**, which is renumbered from Section 39-6-62 is renumbered and amended to read:

~~[39-6-62].~~ **39A-5-234. Petition for new trial -- Grounds.**

Within 30 days after approval by the convening authority of a military court sentence, the accused may petition the convening authority for a new trial on the ground of newly discovered evidence or fraud on the court.

Section 90. Section **39A-5-235**, which is renumbered from Section 39-6-37 is renumbered and amended to read:

~~[39-6-37].~~ **39A-5-235. Second trial on an offense prohibited.**

(1) ~~[A person]~~ An individual may not, without ~~[his]~~ the individual's written consent, be brought to trial a second time in any military or civilian court of the state for the same offense.

(2) A proceeding in which an accused has been found guilty by a military court upon any charge or specification, is not a trial under this section until the finding of guilty has become final and the review of the case has been completed.

(3) A proceeding that, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial under this section.

Section 91. Section **39A-5-236**, which is renumbered from Section 39-6-63 is renumbered and amended to read:

~~[39-6-63].~~ **39A-5-236. Sentence -- Vacation or suspension.**

(1) A convening authority may ~~[remit]~~ vacate or suspend any part or amount of the unexecuted portion of the sentence, including all uncollected forfeitures.

(2) The governor may for good cause shown substitute an administrative form of a discharge for a bad conduct discharge or dismissal executed under a military court sentence.

Section 92. Section **39A-5-237**, which is renumbered from Section 39-6-64 is renumbered and amended to read:

~~[39-6-64]~~. **39A-5-237. Sentence set aside -- Rights restored.**

(1) Under rules prescribed by the governor or the adjutant general all rights, privileges, and property affected by an executed portion of a military court sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and the executed part is included in a sentence imposed upon the new trial or rehearing.

(2) If a previously executed sentence of bad conduct discharge is not imposed in a new trial, the governor shall substitute a discharge authorized for administrative issue, unless the accused is serving the remainder of his or her enlistment.

(3) (a) If a previously executed sentence of dismissal is not imposed in a new trial, the governor shall substitute a discharge authorized for administrative issue.

(b) ~~[The]~~ A commissioned officer dismissed by ~~[the]~~ a sentence may be reappointed by the governor to the grade and rank ~~[he]~~ the commissioned officer had attained, if a position is available under the applicable organization.

(c) Time between the dismissal and reappointment is considered service for all purposes.

Section 93. Section **39A-5-238**, which is renumbered from Section 39-6-65 is renumbered and amended to read:

~~[39-6-65]~~. **39A-5-238. Finality of military court judgments.**

(1) The proceedings, findings, and sentence a military court has reviewed and approved under this chapter, and all dismissals and discharges executed under sentences by military court following review and approval under this chapter, are final and conclusive.

(2) Orders publishing the proceedings of military court and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the state, subject only to action upon a petition for new trial under Section ~~[39-6-62]~~ 39A-5-234.

Section 94. Section **39A-5-239**, which is renumbered from Section 39-6-107 is renumbered and amended to read:

~~[39-6-107]~~. **39A-5-239. Courts of inquiry.**

(1) Courts of inquiry to investigate any matter may be convened by the governor or his designee, whether or not the ~~[persons]~~ individuals involved have requested the inquiry.

(2) A court of inquiry consists of three or more commissioned officers. For each court,

the convening authority shall also appoint counsel for the court.

(3) (a) ~~[A person]~~ An individual subject to this chapter whose conduct is subject to inquiry shall be designated as a party. ~~[A person]~~ An individual subject to this chapter or employed by the National Guard, who has a direct interest in the subject of inquiry, has the right to be designated as a party upon request to the court.

(b) ~~[A person]~~ An individual designated as a party shall be given due notice and has the right to be present, represented by counsel, to have counsel appointed, to cross examine witnesses, and to introduce evidence.

(4) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(5) The members, counsel, ~~[the]~~ reporter, and interpreters of a court of inquiry shall take an oath or affirmation to faithfully perform ~~[their duties]~~ the duties required under this section.

(6) Witnesses may be summoned to appear and testify and be examined before a court of inquiry, under the same provisions as for a military court.

(7) A court of inquiry shall make findings of fact but may not express opinions or make recommendations, unless required to do so by the convening authority.

(8) (a) A court of inquiry shall keep a record of ~~[its]~~ the court's proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority.

(b) (i) If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president.

(ii) If the record cannot be authenticated by the counsel for the court, it shall be authenticated by a member in lieu of the counsel.

Section 95. Section **39A-5-301**, which is renumbered from Section 39-6-49 is renumbered and amended to read:

~~[39-6-49].~~ **39A-5-301. Military punishments -- Limits of punishment -- Cruel and unusual punishments -- Use of irons.**

(1) Punishment directed by a military court for an offense may not exceed limits prescribed under ~~[Section 39-1-38.5]~~ Subsection (2) or lesser limits prescribed by the governor ~~[may prescribe]~~ for the offense.

1888 (2) A military court may impose upon an accused any of the following after conviction
1889 for an offense:

1890 (a) incarceration in a county jail for no longer than one year;

1891 (b) a fine of not more than \$2,500;

1892 (c) forfeiture of pay of not more than \$2,500;

1893 (d) detention of pay equivalent to three months' pay for a period not to exceed one
1894 year;

1895 (e) arrest in quarters for officers;

1896 (f) restriction to specified limits for enlisted members;

1897 (g) extra duty for not more than 60 consecutive days;

1898 (h) reprimand;

1899 (i) reduction of enlisted members to the lowest enlisted grade;

1900 (j) a bad conduct discharge for enlisted members;

1901 (k) dismissal for officers;

1902 (l) restitution to any individual or entity injured as a result of the accused's conduct; or

1903 (m) any combination of Subsections (2)(a) through (2)(l).

1904 (3) Cruel or unusual punishments, including flogging, branding, marking, or tattooing
1905 on the body may not be imposed by any court or inflicted upon any individual subject to this
1906 chapter.

1907 (4) Single or double irons may not be used unless necessary for safe custody.

1908 Section 96. Section **39A-5-302**, which is renumbered from Section 39-6-14 is
1909 renumbered and amended to read:

1910 ~~[39-6-14].~~ **39A-5-302. Nonjudicial punishment.**

1911 (1) The governor and the adjutant general of Utah may prescribe regulations governing
1912 the administration of nonjudicial punishment. The imposition and enforcement of disciplinary
1913 punishment under this section for any act or omission is not a bar to trial by a civilian court of
1914 competent jurisdiction.

1915 (2) A service member subject to this chapter may request trial by military court in lieu
1916 of nonjudicial punishment at any time prior to imposition of nonjudicial punishment.

1917 (a) Upon receipt of a timely request for trial by military court in lieu of nonjudicial
1918 punishment, the commanding officer may grant the request, or deny the request and continue

with nonjudicial punishment proceedings. If the commander denies the member's request for trial by military court, the commander may not impose limitations on personal liberty as a punishment under nonjudicial punishment proceedings. For purposes of this section, punishments imposing limitations on personal liberty include restriction to specific limited areas and extra duties.

(b) Denial of a request for trial by military court in lieu of nonjudicial punishment does not create a private right of action and is not subject to judicial review.

(3) Any commanding officer in the [Utah] National Guard may, in addition to a reprimand, impose one or more of the punishments under this section without the intervention of a military court.

(a) Forfeiture of pay shall be calculated based on the monthly amount a service member would receive as base pay if on active duty.

(b) If a reduction of pay grade is imposed, forfeiture of pay is based on the grade to which the service member was reduced even if the reduction was suspended.

(4) Punishment imposed by the governor, a general officer, or a full colonel upon officers within the general officer's or full colonel's command may include:

(a) forfeiture of not more than one-half of one month's pay per month for three months; and

(b) restriction to specific limited areas, with or without suspension from duty, for not more than 60 consecutive days.

(5) Punishment imposed by the governor, a general officer, or a full colonel upon enlisted personnel within the general officer's or full colonel's command may include:

(a) forfeiture of not more than one-half of one month's pay per month for two months;

(b) reduction of one or more pay grades if the imposing commander holds promotion authority over the grade from which the enlisted [person] member was demoted, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;

(c) extra duties, including fatigue or other duties, for not more than 60 consecutive days; and

(d) restriction to specific limited areas, with or without suspension from duty, for not more than 60 consecutive days.

(6) Punishment imposed by a commander of the grade of lieutenant colonel or major

1950 upon enlisted personnel within the lieutenant colonel's or major's command may include:

1951 (a) forfeiture of not more than one-half of one month's pay per month for two months;

1952 (b) reduction of no more than two pay grades if the imposing commander holds

1953 promotion authority over the grade from which the enlisted ~~[person]~~ member was demoted;

1954 (c) extra duties, including fatigue or other duties, for not more than 45 consecutive
1955 days; and

1956 (d) restriction to specific limited areas, with or without suspension of duty, for not
1957 more than 45 consecutive days.

1958 (7) Punishment imposed by a commander of the grade of captain or lieutenant upon
1959 enlisted personnel within the captain's or lieutenant's command may include:

1960 (a) forfeiture of not more than one-half of one month's pay for one month;

1961 (b) extra duties, including fatigue or other duties, for not more than 30 consecutive
1962 days;

1963 (c) restriction to specific limited areas, with or without suspension from duty, for not
1964 more than 30 consecutive days; and

1965 (d) reduction of one pay grade if the imposing commander holds promotion authority
1966 over the grade from which the enlisted ~~[person]~~ member was demoted.

1967 (8) Punishments of restriction to specific limited areas and extra duty may be combined
1968 to run concurrently, but the combination may not exceed the maximum duration imposable for
1969 extra duty.

1970 (9) (a) The imposing commander or a successor in command may, at any time, suspend
1971 by probation:

1972 (i) all or any part of the amount of the unexecuted punishment; and

1973 (ii) a reduction in grade or a forfeiture imposed, whether or not executed.

1974 (b) The imposing commander or a successor in command shall set the terms of
1975 probation for any suspended punishment.

1976 (c) The imposing commander or a successor in command may, at any time, ~~[remit]~~
1977 vacate or mitigate any part or amount of the unexecuted punishment. The imposing
1978 commander or a successor in command may also set aside in whole or in part the findings,
1979 punishment, or both, whether executed or unexecuted, and restore all rights, privileges, and
1980 affected property.

(d) The imposing commander or a successor in command may mitigate reduction in grade to forfeiture of pay. Extra duties may be mitigated to restriction.

(e) A mitigated punishment may not span a greater period of time than the original punishment.

(f) When mitigating a reduction in grade to forfeiture of pay, the amount of the forfeiture may not exceed the maximum allowable forfeiture the imposing commander could have originally imposed.

(10) (a) A service member punished under this section may appeal to the next superior commander in the service member's chain of command. The next superior commander shall conduct a de novo review of both the findings and punishment under procedures provided by regulation. The next superior commander may modify or set aside the findings or punishment, having the same options afforded the imposing commander as described in this section. In no case may the next superior commander increase the severity of the findings or the amount of punishment originally imposed.

(b) If two levels of command exist above the imposing commander, the service member, having exhausted the service member's first level of appeal, may appeal to the next superior commander. If the matter originates with the governor, the adjutant general, or one level of command below the adjutant general, no right to a second appeal exists. The decision of the adjutant general on an appeal of nonjudicial punishment is final and is not subject to further appeal or judicial review.

(c) The decision of the governor or the adjutant general to impose nonjudicial punishment upon a service member is final and is not subject to further appeal or judicial review.

(d) The imposing commander shall promptly forward any appeal to the next superior commander. During the course of the appeal, the imposing commander may require the appellant to submit to the imposed punishment.

(11) A superior commander shall first obtain a legal review from a judge advocate of the Utah National Guard before acting on an appeal from any of the following imposed punishments:

(a) forfeiture of more than seven day's pay;

(b) reduction of one or more pay grades;

2012 (c) extra duties for more than 14 days; or

2013 (d) restriction for more than 14 days.

2014 (12) Punishments imposed under this section, except forfeiture of pay, may not extend
2015 beyond the termination of the duty status of the punished individual.

2016 Section 97. Section **39A-5-303**, which is renumbered from Section 39-6-110 is
2017 renumbered and amended to read:

2018 ~~[39-6-110].~~ **39A-5-303. Fines.**

2019 (1) Fines imposed by a military court may be paid to [a] the military court or to an
2020 officer executing [its] process for the court. The amount of the fine may be noted upon any
2021 state roll or account for pay of the delinquent and deducted from any pay or allowance due or to
2022 become due to [him] the individual fined, until the fine is completely paid.

2023 (2) Any sum deducted shall be turned in to the military court which imposed the fine
2024 and shall be paid by the officer receiving it under the same procedure as for fines and other
2025 money collected under a sentence of a military court.

2026 (3) A fine or penalty imposed by a military court upon an officer or enlisted [person]
2027 member shall be paid by the officer collecting it to the state General Fund[;] within 30 days.

2028 Section 98. Section **39A-5-304**, which is renumbered from Section 39-6-50 is
2029 renumbered and amended to read:

2030 ~~[39-6-50].~~ **39A-5-304. Forfeiture of pay as sentence.**

2031 (1) When a lawful and approved sentence of a court includes a forfeiture of pay or
2032 allowances in addition to confinement that is not suspended or deferred, the forfeiture may
2033 apply to pay or allowances becoming due on or after the date the sentence is approved by the
2034 convening authority.

2035 (2) A forfeiture may not extend to any pay or allowances [acquired] received before
2036 that date.

2037 Section 99. Section **39A-5-305**, which is renumbered from Section 39-6-51 is
2038 renumbered and amended to read:

2039 ~~[39-6-51].~~ **39A-5-305. Confinement as sentence -- Penal institutions.**

2040 (1) A sentence of confinement imposed by a military court, whether or not it includes
2041 discharge or dismissal and whether or not the discharge or dismissal has been executed, may be
2042 carried into execution by confinement in any place of confinement under the control of any of

the forces of the National Guard or in any [~~jail, penitentiary, or prison under the control~~] penal institution of the state or of any political subdivision of the state.

(2) If the words "hard labor" are not included in a sentence or punishment imposed by a court martial imposing confinement, the authority executing the sentence or punishment is not prohibited from requiring hard labor as a part of the sentence or punishment.

(3) The [~~keepers,~~] officers, sheriffs, and [~~wardens of~~] penal institutions of the state and [~~its~~] any political subdivisions of the state designated by the governor or his designee under Section [~~39-6-10~~] 39A-5-111 shall:

(a) receive [~~persons~~] individuals ordered into confinement before trial and [~~persons~~] individuals committed to confinement by a military court;

(b) confine them according to law; and

(c) receive or confine [~~a person~~] an individual under this chapter without assessing any fee or charge.

Section 100. Section **39A-5-306**, which is renumbered from Section 39-6-17 is renumbered and amended to read:

[~~39-6-17~~]. 39A-5-306. Bad conduct discharge or dismissal -- Approval by governor.

(1) A sentence imposing dismissal or bad conduct discharge against a member of the National Guard who is not in federal service may not be executed until it is approved by the governor.

(2) A discharge or dismissal may not be imposed by any military court unless a complete written record of the proceedings has been made and is available for consideration of the military court.

Section 101. Section **39A-6-101**, which is renumbered from Section 39-7-102 is renumbered and amended to read:

[~~39-7-102~~]. 39A-6-101. Utah Service Members' Civil Relief Act -- Definitions.

As used in this chapter:

(1) "Dependent" means the spouse and children of a service member or any other [~~person~~] individual dependent upon the service member for support.

(2) "Interest" includes service charges, renewal charges, fees, or any other charges in respect to any obligation or liability.

(3) "Service member" means any member of the Utah National Guard or Utah State Defense Force serving on active military service in an organized military unit.

~~[(3) "Military]~~ (4) "State military service" means active, full-time service with a recognized military unit called into service by the governor for at least 30 days.

~~[(4) "Service member" means any member of the National Guard serving on active military service in an organized military unit.]~~

Section 102. Section **39A-6-102** is enacted to read:

39A-6-102. Application of this chapter.

(1) Military members of the National Guard or the Defense Force, when ordered to state military service by the governor have the same rights and protections as provided by federal law for activation to federal military service.

(2) Proper application of this chapter shall suspend or postpone actions upon certain obligations until 60 days after discharge from active, full-time state military service.

Section 103. Section **39A-6-103**, which is renumbered from Section 39-7-119 is renumbered and amended to read:

~~[39-7-119].~~ **39A-6-103. Rulemaking authority.**

The ~~[Adjutant General]~~ adjutant general may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this chapter.

Section 104. Section **39A-6-104**, which is renumbered from Section 39-7-104 is renumbered and amended to read:

~~[39-7-104].~~ **39A-6-104. Reopening default judgments.**

(1) A default judgment rendered in any civil action against a service member during a period of state military service or within 30 days after termination of the state military service may be set aside if:

(a) it appears that the ~~[person]~~ service member was prejudiced by reason of ~~[his]~~ the service member's state military service in making a defense to the action;

(b) application by the ~~[person]~~ service member or ~~[his]~~ the service member's legal representative is made to the court rendering the judgment not later than 60 days after the termination of the service member's state military service; and

(c) the application provides enough facts that it appears that the defendant has a meritorious or legal defense to the action or some part of the action.

(2) Vacating, setting aside, or reversing any judgment because of any of the provisions of this chapter may not impair any right or title acquired by any bona fide purchaser for value under the judgment.

Section 105. Section **39A-6-105**, which is renumbered from Section 39-7-105 is renumbered and amended to read:

~~[39-7-105].~~ 39A-6-105. Stay of proceedings.

(1) If at any point during an action or proceeding it appears that a plaintiff or defendant is a service member and in the conduct of the proceedings may be adversely affected by ~~[his]~~ the service member's state military service, the court may, on its own motion, stay the proceedings.

(2) The court may stay the proceedings if the service member or another ~~[person]~~ individual on ~~[his]~~ the service member's behalf makes a request in writing to the court, unless the court determines on the record that the ability of the plaintiff to pursue the action or the defendant to conduct ~~[his]~~ a defense is not materially affected by reason of ~~[his]~~ the service member's state military service.

Section 106. Section **39A-6-106**, which is renumbered from Section 39-7-106 is renumbered and amended to read:

~~[39-7-106].~~ 39A-6-106. Fines and penalties on contracts.

(1) If compliance with the terms of a contract is stayed pursuant to this chapter, a fine or penalty may not accrue by reason of failure to comply during the period of the stay.

(2) If a service member has not obtained a stay and a fine or penalty is imposed for nonperformance of an obligation, a court may relieve enforcement if the service member was in state military service when the penalty was incurred and ~~[his]~~ the service member's ability to pay or perform was materially impaired.

Section 107. Section **39A-6-107**, which is renumbered from Section 39-7-107 is renumbered and amended to read:

~~[39-7-107].~~ 39A-6-107. Exercise of rights not to affect future financial transactions.

Application by a service member in state military service for, or receipt of, a stay, postponement, or suspension under the provisions of this chapter in the payment of any fine, penalty, insurance premium, or other civil obligation or liability may not be used for any of the

following:

(1) a determination by any lender or other person that the service member is unable to pay any civil obligation or liability in accordance with its terms;

(2) with respect to a credit transaction between a creditor and a service member:

(a) a denial or revocation of credit by the creditor;

(b) a change by the creditor in the terms of an existing credit arrangement; or

(c) a refusal by the creditor to grant credit to the service member in substantially the amount or on substantially the terms requested; or

(3) an adverse report relating to the creditworthiness of the service member by or to any person or entity engaged in the practice of assembling or evaluating consumer credit information.

Section 108. Section **39A-6-108**, which is renumbered from Section 39-7-108 is renumbered and amended to read:

[39-7-108]. 39A-6-108. Stay of execution of judgment.

Unless the court determines on the record that the ability of the service member to comply with the judgment or order entered or sought is not materially affected by reason of [his] the service member's state military service, the court may, on its own motion, or upon application [to it] by the service member or another [person on his] individual on the service member's behalf:

(1) stay the execution of any judgment or order entered against the service member, as provided in this chapter; and

(2) vacate or stay any attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment as provided in this chapter.

Section 109. Section **39A-6-109**, which is renumbered from Section 39-7-109 is renumbered and amended to read:

[39-7-109]. 39A-6-109. Duration of stays.

(1) Any stay of any action, proceeding, attachment, or execution, ordered by any court under the provisions of this chapter may be ordered for the period of state military service plus 60 days after its termination or any part of that time period.

(2) ~~[Where]~~ If the service member in state military service is a codefendant with others, the plaintiff may, with leave of the court, proceed against the others.

2167 Section 110. Section **39A-6-110**, which is renumbered from Section 39-7-110 is
2168 renumbered and amended to read:

2169 ~~[39-7-110].~~ **39A-6-110. Statutes of limitations affected by state military service.**

2170 The period of state military service is not included in computing any period limited by
2171 law, rule, or order for the bringing of any action or proceeding in any court, board, bureau,
2172 commission, department, or other agency of government by or against any ~~[person]~~ individual
2173 in state military service or by or against ~~[his]~~ the service member's heirs, executors,
2174 administrators, or assigns, whether the cause of action or the right or privilege to institute the
2175 action or proceeding has accrued prior to or during the period of state military service.

2176 Section 111. Section **39A-6-111**, which is renumbered from Section 39-7-111 is
2177 renumbered and amended to read:

2178 ~~[39-7-111].~~ **39A-6-111. Maximum rate of interest.**

2179 An obligation or liability bearing interest at a rate in excess of six percent per year
2180 incurred by a service member in state military service before ~~[his]~~ the service member's entry
2181 into state military service may not, during any part of the period of state military service, bear
2182 interest at a rate in excess of six percent per year unless, in the opinion of the court and upon
2183 application to the court by the obligee, the ability of the service member to pay interest upon
2184 the obligation or liability at a rate in excess of six percent per year is not materially affected by
2185 reason of ~~[his]~~ the service member's service. The court may make any order in the action that,
2186 in ~~[its]~~ the court's opinion, is just.

2187 Section 112. Section **39A-6-112**, which is renumbered from Section 39-7-112 is
2188 renumbered and amended to read:

2189 ~~[39-7-112].~~ **39A-6-112. Dependent benefits.**

2190 Dependents of a service member in state military service are entitled to the benefits
2191 accorded to service members in state military service under the provisions of Sections
2192 ~~[39-7-113 through 39-7-117]~~ 39A-6-113 through 39A-6-117 upon application to a court,
2193 unless, in the opinion of the court, the ability of the dependents to comply with the terms of the
2194 obligation, contract, lease, or bailment has not been materially impaired by reason of the state
2195 military service of the service member upon whom the applicants are dependent.

2196 Section 113. Section **39A-6-113**, which is renumbered from Section 39-7-113 is
2197 renumbered and amended to read:

2198 **[39-7-113]. 39A-6-113. Eviction or distress of dependents.**

2199 (1) A landlord may not evict or take and hold property of a service member or the
2200 service member's dependents for nonpayment of rent during the period of state military service
2201 if the rent on the premises occupied by the service member or the service member's dependents
2202 is less than \$2,400 per month unless a court allows it after application to the court and an order
2203 granted in an action or proceeding affecting the right of possession.

2204 (2) In any action affecting the right of possession, the court may, on its own motion,
2205 stay the proceedings for not longer than three months, or make any order the court determines
2206 to be reasonable and just under the circumstances, unless the court finds that the ability of the
2207 tenant to pay the agreed rent is not materially affected by reason of the service member's state
2208 military service.

2209 (3) When a stay is granted or other order is made by the court, the owner of the
2210 premises shall be entitled, upon application, to relief with respect to the premises similar to that
2211 granted service members in military service in Sections [~~39-7-114 through 39-7-116~~]
2212 39A-6-114 through 39A-6-116 to the extent and for any period as the court determines to be
2213 just and reasonable under the circumstances.

2214 (4) Any person who knowingly takes part in any eviction or distress otherwise than as
2215 provided in Subsection (1), or attempts to do so, is guilty of a class B misdemeanor.

2216 (5) The governor is empowered to order an allotment of the pay of a service member in
2217 state military service in reasonable proportion to discharge the rent of premises occupied for
2218 dwelling purposes by any dependents of the service member.

2219 Section 114. Section **39A-6-114**, which is renumbered from Section 39-7-114 is
2220 renumbered and amended to read:

2221 **[39-7-114]. 39A-6-114. Installment contracts.**

2222 (1) The creditor of a service member who, prior to entry into state military service, has
2223 entered into an installment contract for the purchase of real or personal property may not
2224 terminate the contract or repossess the property for nonpayment or any breach occurring during
2225 military service without an order from a court of competent jurisdiction.

2226 (2) The court, upon application to it under this section, may, unless the court finds on
2227 the record that the ability of the service member to comply with the terms of the contract is not
2228 materially affected by reason of the service member's state military service:

(a) order repayment of any prior installments or deposits as a condition of terminating the contract and resuming possession of the property;

(b) order a stay of the proceedings on ~~[its]~~ the court's own motion, or on motion by the service member or another ~~[person]~~ individual on the service member's behalf; or

(c) make any other disposition of the case ~~[it]~~ the court considers to be equitable to conserve the interests of all parties.

(3) Any person who knowingly repossesses property which is the subject of this section other than as provided in Subsection (1) is guilty of a class B misdemeanor.

Section 115. Section **39A-6-115**, which is renumbered from Section 39-7-115 is renumbered and amended to read:

[39-7-115]. 39A-6-115. Mortgage foreclosures.

(1) The creditor of a service member who ~~[prior to entry into military service, has]~~ entered into a mortgage contract with the service member or the service member's dependent for the purchase of real or personal property prior to the service member's entry into state military service may not foreclose on the mortgage or repossess the property for nonpayment or any breach occurring during the service member's state military service without an order from a court of competent jurisdiction.

(2) The court, upon an application ~~[to it]~~ under this section, may, unless the court finds on the record that the ability of the service member to comply with the terms of the mortgage is not materially affected by reason of the service member's state military service:

(a) order repayment of any prior installments or deposits as a condition of terminating the contract and resuming possession of the property;

(b) order a stay of the proceedings on ~~[its]~~ the court's own motion, or on motion by the service member or another ~~[person]~~ individual on the service member's behalf; or

(c) make any other disposition of the case as ~~[it]~~ the court considers to be equitable to conserve the interests of all parties.

(3) In order to come within the provisions of this section, the service member or dependent shall establish the following:

(a) that relief is sought on an obligation secured by a mortgage, trust deed, or other security in the nature of a mortgage on either real or personal property;

(b) that the obligation originated prior to the service member's entry into state military

2260 service;

2261 (c) that the property was owned by the service member or the service member's
2262 dependent prior to the commencement of state military service; and

2263 (d) that the property is still owned by the service member or the service member's
2264 dependent at the time relief is sought.

2265 (4) Any person who knowingly forecloses on property which is the subject of this
2266 section other than as provided in Subsection (1) is guilty of a class B misdemeanor.

2267 Section 116. Section **39A-6-116**, which is renumbered from Section 39-7-116 is
2268 renumbered and amended to read:

2269 **~~[39-7-116].~~ 39A-6-116. Application for relief.**

2270 (1) A ~~[person]~~ service member may, at any time during ~~[his]~~ the service member's
2271 period of state military service or within 60 days after discharge or termination, apply to a court
2272 for relief in respect of any obligation or liability incurred by the ~~[person]~~ service member prior
2273 to ~~[his]~~ the service member's period of military service.

2274 (2) The court, after appropriate notice and hearing, unless in ~~[its]~~ the court's opinion
2275 the ability of the applicant to comply with the terms of the obligation or liability has not been
2276 materially affected by reason of ~~[his]~~ the service member's state military service, may grant the
2277 following relief:

2278 (a) In the case of an obligation payable under its terms in installments under a contract
2279 for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a
2280 mortgage upon real estate, a stay of the enforcement of the obligation during the applicant's
2281 period of state military service and, from the date of termination of the period of state military
2282 service or from the date of application if made after termination of state military service, for a
2283 period equal to the period of the remaining life of the installment contract or other instrument
2284 plus a period of time equal to the period of state military service of the applicant, or any part of
2285 the combined period, subject to payment of the balance of principal and accumulated interest
2286 due and unpaid at the date of termination of the period of state military service or from the date
2287 of application, in equal installments during the combined period at the rate of interest on the
2288 unpaid balance as is prescribed in the contract, or other instrument evidencing the obligation,
2289 for installments paid when due, and subject to any other terms as the court may consider just.

2290 (b) In the case of any other obligation or liability, a stay of the enforcement during the

applicant's period of state military service and, from the date of termination of the period of state military service or from the date of application if made after termination of the period of state military service, for a period of time equal to the period of state military service of the applicant or any part of that period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of state military service or the date of application, in equal periodic installments during the extended period at the rate of interest prescribed for the obligation or liability, if paid when due, and subject to other terms the court considers to be reasonable and just.

(3) When any court has granted a stay as provided in this section, a fine or penalty may not be accrued for failure to comply with the terms or conditions of the obligation or liability for which the stay was granted during the period the terms and conditions of the stay are complied with.

Section 117. Section **39A-6-117**, which is renumbered from Section 39-7-117 is renumbered and amended to read:

[39-7-117]. 39A-6-117. Storage liens.

(1) A person may not exercise any right to foreclose or enforce any lien for storage of household goods, furniture, or personal effects of a service member in state military service during the service member's period of state military service and for 60 days after termination or discharge, except upon an order previously granted by a court upon application and a return to the court made and approved by the court. In the proceeding the court may, after hearing the matter, on its own motion, and shall, on application [~~to it~~] by the service member in state military service or another [~~person~~] individual on the service member's behalf, unless in the opinion of the court the ability of the service member to pay the storage charges due is not materially affected by reason of the service member's state military service:

(a) stay the proceedings as provided in this chapter; or

(b) make any other disposition the court considers to be equitable to conserve the interest of all the parties.

(2) The enactment of the provisions of this section may not be construed in any way as affecting or limiting the scope of Section [~~39-7-115~~] 39A-6-115.

(3) Any person who knowingly takes any action contrary to the provisions of this section, or attempts to do so, is guilty of a class B misdemeanor.

Section 118. Section **39A-7-101**, which is renumbered from Section 39-9-101 is renumbered and amended to read:

~~[39-9-101].~~ **39A-7-101. State Morale, Welfare, and Recreation Program -- Program established.**

~~[(1) This chapter is known as the "State Morale, Welfare, and Recreation Program."]~~
~~[(2)]~~ The adjutant general is authorized to establish a Utah National Guard Morale, Welfare, and Recreation Program to serve members of the military, eligible dependents, and others as set out in Section ~~[39-9-103]~~ 39A-7-103.

Section 119. Section **39A-7-102**, which is renumbered from Section 39-9-102 is renumbered and amended to read:

~~[39-9-102].~~ **39A-7-102. Definitions.**

For purposes of this chapter:

(1) "Dependent" means the spouse or children of ~~[a person]~~ an individual eligible to use the program and facilities in accordance with Section ~~[39-9-103]~~ 39A-7-103.

(2) "MWR" means morale, welfare, and recreation.

(3) "MWR facility" means any Utah National Guard facility located on a Department of Defense or Utah National Guard installation or on property controlled by the Department of Defense or the Utah National Guard, the purpose of which is to enhance MWR for authorized patrons.

Section 120. Section **39A-7-103**, which is renumbered from Section 39-9-103 is renumbered and amended to read:

~~[39-9-103].~~ **39A-7-103. Eligibility and facilities.**

(1) Use of the MWR program and facilities is limited to:

(a) active and reserve component members of the Utah National Guard and armed forces of the United States;

(b) ~~[persons]~~ individuals retired from the armed forces of the United States;

(c) civilian employees of the Utah National Guard;

(d) dependents of authorized ~~[persons]~~ individuals in Subsections (1)(a) through (c);

(e) contracted employees of the Utah National Guard while working on-site or conducting business on National Guard property; ~~[and]~~

(f) sponsored ~~[persons]~~ individuals when personally accompanied by a sponsor who is

2353 an eligible patron as described in this section; and

2354 (g) other personnel or organizations at the discretion of the adjutant general.

2355 (2) MWR facilities include any of the following, even if the shop, building, or parcel is
2356 only partially used for MWR purposes:

2357 (a) post or base exchange;

2358 (b) canteen or service club;

2359 (c) barber shop;

2360 (d) fitness center;

2361 (e) snack bar;

2362 (f) restaurant;

2363 (g) billeting operation;

2364 (h) laundry facility;

2365 (i) range;

2366 (j) swimming pool; or

2367 (k) any other shop, building, or parcel that meets the definition of MWR facility in

2368 Section ~~[39-9-102]~~ [39A-7-102](#).

2369 (3) The adjutant general shall, by regulation, determine specific use priorities when
2370 MWR facilities cannot accommodate all authorized patrons.

2371 Section 121. Section **39A-7-104**, which is renumbered from Section 39-9-104 is
2372 renumbered and amended to read:

2373 ~~[39-9-104].~~ **39A-7-104. Administration of MWR Program.**

2374 (1) The adjutant general may authorize the program to:

2375 (a) contract for goods and services;

2376 (b) hire employees; and

2377 (c) receive funds from patrons in exchange for goods or services provided within the
2378 program.

2379 (2) The adjutant general is authorized to establish MWR facilities throughout the state
2380 that, in the adjutant general's judgment, are necessary for military purposes.

2381 (3) The adjutant general shall promulgate regulations to govern the operation of the
2382 program.

2383 (4) The adjutant general may appoint a director for the program.

(5) The adjutant general shall establish a system of bookkeeping, accounting, and auditing procedures for the proper handling of funds derived from the program's operations.

(6) The program may use State Armory Board-controlled properties, provided:

(a) the use incurs no more than nominal cost to the state; or

(b) any costs to the state above nominal associated with the use are reimbursed to the state by the program.

Section 122. Section **39A-7-105**, which is renumbered from Section 39-9-105 is renumbered and amended to read:

~~[39-9-105].~~ **39A-7-105. National Guard MWR Fund -- Proceeds.**

(1) There is created an expendable special revenue fund known as the National Guard MWR Fund.

(2) The fund shall consist of:

(a) all proceeds collected under this chapter;

(b) donations made to the National Guard MWR Program; and

(c) any appropriations to the program by the Legislature.

(3) Money from the fund shall be used for the enhancement of morale, welfare, and recreation, and the administration of the program under this chapter, including paying the costs of:

(a) salaries of program employees;

(b) public liability insurance, when needed;

(c) the adjutant general's Outreach Program;

(d) the State Partnership Program; and

(e) any other expenses considered necessary in furtherance of the program by the adjutant general or the adjutant general's designee.

Section 123. Section **39A-8-101**, which is renumbered from Section 39-10-101 is renumbered and amended to read:

~~[39-10-101].~~ **39A-8-101. West Traverse Sentinel Landscape Act -- Purpose.**

~~[(1) This chapter is known as "West Traverse Sentinel Landscape Act."]~~

~~[(2)]~~ The purpose of this act is to:

~~[(a)]~~ (1) identify lands adjacent to Camp Williams that are important to the nation's

2415 defense mission;

2416 ~~[(b)]~~ (2) preserve and enhance the relationship between adjacent landowners and Camp
2417 Williams; and

2418 ~~[(c)]~~ (3) create incentives to encourage adjacent landowners to adopt land management
2419 practices consistent with Camp Williams's military mission.

2420 Section 124. Section **39A-8-102**, which is renumbered from Section 39-10-102 is
2421 renumbered and amended to read:

2422 ~~[39-10-102].~~ **39A-8-102. Area designation -- West Traverse Sentinel**

2423 **Landscape.**

2424 (1) The compatible use buffer area surrounding Camp Williams shall be known as the
2425 West Traverse Sentinel Landscape.

2426 (2) Lands designated by the committee established in Section ~~[39-10-103]~~ 39A-8-103
2427 and lands acquired or encumbered through the Camp Williams Army Compatible Use Buffer
2428 (ACUB) Program shall be added to the buffer area.

2429 Section 125. Section **39A-8-103**, which is renumbered from Section 39-10-103 is
2430 renumbered and amended to read:

2431 ~~[39-10-103].~~ **39A-8-103. West Traverse Sentinel Landscape Coordinating**

2432 **Committee.**

2433 (1) There is created the West Traverse Sentinel Landscape Coordinating Committee.

2434 (2) The committee shall be composed of the following members:

2435 (a) the adjutant general of the Utah National Guard or another senior officer appointed
2436 by the adjutant general;

2437 (b) the executive director of the Department of Veterans and Military Affairs or the
2438 director's designee;

2439 (c) a landowner, selected by the chair, who owns property within the sentinel landscape
2440 area;

2441 (d) a representative from a land conservation organization in Utah recognized as
2442 accredited under the standards and practices of the Land Trust Accreditation Commission;

2443 (e) a representative from each municipality adjacent to Camp Williams, at the
2444 discretion of the municipality;

2445 (f) one representative each from Salt Lake, Utah, and Tooele counties, at the discretion

2446 of the county governing body;

2447 (g) a representative from a nongovernmental land management organization; and

2448 (h) one member selected from a state agency that participates in land management
2449 activities.

2450 (3) Committee members shall be selected and serve in accordance with this Subsection
2451 (3).

2452 (a) The committee member representing Subsection (2)(c) shall be selected by the chair
2453 from a list of nominees presented by local officials.

2454 (b) The committee members representing Subsections (2)(d) and (g) shall be invited to
2455 participate by the chair with the approval of a majority of the committee.

2456 (c) Each incorporated municipality bordering Camp Williams shall, at its discretion no
2457 later than July 1 of each year, provide the chair with the name of the individual who will
2458 represent the municipality on the committee, as provided in Subsection (2)(e). If the
2459 municipality declines to be represented on the committee, it shall send a letter to the chair on
2460 the municipality's letterhead stating that no individual will be appointed.

2461 (d) If a county, as provided in Subsection (2)(f), declines to be represented on the
2462 committee, it shall send a letter to the chair on the county's letterhead not later than July 1 of
2463 each year stating that no individual will be appointed.

2464 (e) The committee chair shall request the appointment of members representing
2465 Subsection (2)(h) from:

2466 (i) the governor if the request is for a member from a state agency; or

2467 (ii) the mayor or governing body of a local government entity if the request is for a
2468 member from a local government agency.

2469 (4) The adjutant general or his appointee shall serve as chair of the committee.

2470 (5) The committee shall meet at the call of the chair, but not less than twice each
2471 calendar year.

2472 (6) A member may not receive compensation or benefits for the member's service but
2473 may receive per diem and travel expenses in accordance with:

2474 (a) Section 63A-3-106;

2475 (b) Section 63A-3-107; and

2476 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

2477 63A-3-107.

2478 (7) The Utah National Guard shall provide staff support for the committee.

2479 Section 126. Section **39A-8-104**, which is renumbered from Section 39-10-104 is
2480 renumbered and amended to read:

2481 ~~[39-10-104].~~ **39A-8-104. Committee responsibilities.**

2482 (1) The committee shall:

2483 (a) identify lands to be included in the designated sentinel landscape;

2484 (b) develop strategies and recommendations to encourage landowners within the
2485 sentinel landscape to voluntarily participate in and begin or continue land uses compatible with
2486 Camp Williams's military mission; and

2487 (c) publish any policies and procedures as administrative rules in accordance with Title
2488 63G, Chapter 3, Utah Administrative Rulemaking Act.

2489 (2) In designating sentinel lands, the coordinating committee shall include all working
2490 or natural lands that the coordinating committee believes contribute to the long-term
2491 sustainability of the military missions conducted at Camp Williams.

2492 (3) The committee shall determine the appropriate level of state resources required to
2493 adequately protect Camp Williams's military mission and may apply for grants from the LeRay
2494 McAllister Critical Lands Conservation Program to aid in securing those resources.

2495 (4) In determining lands to designate, the coordinating committee shall seek input
2496 from:

2497 (a) the director of the Department of Defense Readiness and Environmental Protection
2498 Integration Program; and

2499 (b) the director of the National Guard Bureau Army Compatible Use Buffer Program,
2500 as authorized under 10 U.S.C. Sec. 2684(a).

2501 (5) The committee shall provide a written report of its activities if state funds are
2502 expended during the previous calendar year no later than July 31 annually to:

2503 (a) the governor;

2504 (b) the Government Operations Interim Committee; and

2505 (c) the Executive Appropriations Committee.

2506 Section 127. Section **39A-8-105**, which is renumbered from Section 39-10-105 is
2507 renumbered and amended to read:

2508 ~~[39-10-105].~~ **39A-8-105. West Traverse Sentinel Landscape Fund.**

2509 (1) As used in this section:

2510 (a) "Committee" means the West Traverse Sentinel Landscape Coordinating
2511 Committee created in Section ~~[39-10-103]~~ [39A-8-103](#).

2512 (b) "Fund" means the West Traverse Sentinel Landscape Fund.

2513 (2) There is created a restricted account within the General Fund known as the West
2514 Traverse Sentinel Landscape Fund.

2515 (3) The fund shall consist of:

2516 (a) appropriations from the Legislature; and

2517 (b) grants or donations from other public or private sources.

2518 (4) The fund shall be administered by the Utah National Guard and the committee.

2519 (5) The purpose of the fund shall be to provide:

2520 (a) matching funds for established federal funding programs concerning sentinel
2521 landscapes;

2522 (b) matching funds for local and private funding programs that assist with sentinel
2523 landscape designations;

2524 (c) incentives for landowners who voluntarily participate in land management practices
2525 that are consistent with Camp Williams's military missions;

2526 (d) sentinel landscape monitoring, community outreach, and education;

2527 (e) costs associated with due diligence and administration of purchasing land and
2528 easements; and

2529 (f) administrative costs as approved by the Utah National Guard and the committee.

2530 (6) The committee may make an appropriation request through the Utah National
2531 Guard to the Legislature for necessary funds to carry out the committee's purpose.

2532 (7) Upon appropriation, funds may only be used for landscapes that qualify under:

2533 (a) the Army Compatible Use Buffer Program guidelines or similar regulations as a
2534 federal program whose purpose is to secure landscapes that serve to buffer military
2535 installations;

2536 (b) Internal Revenue Code guidelines in 26 U.S.C. Sec. 170(h); or

2537 (c) local municipal or county guidelines established through the committee and
2538 consistent with Camp Williams's military mission.

2539 Section 128. Section **53-2a-603** is amended to read:

2540 **53-2a-603. State Disaster Recovery Restricted Account.**

2541 (1) (a) There is created a restricted account in the General Fund known as the "State
2542 Disaster Recovery Restricted Account."

2543 (b) The disaster recovery account consists of:

2544 (i) money deposited into the disaster recovery account in accordance with Section
2545 **63J-1-314**;

2546 (ii) money appropriated to the disaster recovery account by the Legislature; and

2547 (iii) any other public or private money received by the division that is:

2548 (A) given to the division for purposes consistent with this section; and

2549 (B) deposited into the disaster recovery account at the request of:

2550 (I) the division; or

2551 (II) the person or entity giving the money.

2552 (c) The Division of Finance shall deposit interest or other earnings derived from
2553 investment of account money into the General Fund.

2554 (2) Subject to being appropriated by the Legislature, money in the disaster recovery
2555 account may only be expended or committed to be expended as follows:

2556 (a) (i) subject to Section **53-2a-606**, in any fiscal year the division may expend or
2557 commit to expend an amount that does not exceed \$500,000, in accordance with Section
2558 **53-2a-604**, to fund costs to the state of emergency disaster services in response to a declared
2559 disaster;

2560 (ii) subject to Section **53-2a-606**, in any fiscal year the division may expend or commit
2561 to expend an amount that exceeds \$500,000, but does not exceed \$3,000,000, in accordance
2562 with Section **53-2a-604**, to fund costs to the state of emergency disaster services in response to
2563 a declared disaster if the division:

2564 (A) before making the expenditure or commitment to expend, obtains approval for the
2565 expenditure or commitment to expend from the governor;

2566 (B) subject to Subsection (5), provides written notice of the expenditure or
2567 commitment to expend to the speaker of the House of Representatives, the president of the
2568 Senate, the Division of Finance, the Executive Offices and Criminal Justice Appropriations
2569 Subcommittee, the Legislative Management Committee, and the Office of the Legislative

2570 Fiscal Analyst no later than 72 hours after making the expenditure or commitment to expend;
2571 and

2572 (C) makes the report required by Subsection 53-2a-606(2);

2573 (iii) subject to Section 53-2a-606, in any fiscal year the division may expend or commit
2574 to expend an amount that exceeds \$3,000,000, but does not exceed \$5,000,000, in accordance
2575 with Section 53-2a-604, to fund costs to the state of emergency disaster services in response to
2576 a declared disaster if, before making the expenditure or commitment to expend, the division:

2577 (A) obtains approval for the expenditure or commitment to expend from the governor;

2578 and

2579 (B) submits the expenditure or commitment to expend to the Executive Appropriations
2580 Committee in accordance with Subsection 53-2a-606(3); and

2581 (iv) in any fiscal year the division may expend or commit to expend an amount that
2582 does not exceed \$150,000 to fund expenses incurred by the National Guard if:

2583 (A) in accordance with Section [39-1-5] 39A-3-103, the governor orders into active
2584 service the National Guard in response to a declared disaster; and

2585 (B) the money is not used for expenses that qualify for payment as emergency disaster
2586 services;

2587 (b) money not described in Subsections (2)(a)(i), (ii), and (iii) may be expended or
2588 committed to be expended to fund costs to the state directly related to a declared disaster that
2589 are not costs related to:

2590 (i) emergency disaster services;

2591 (ii) emergency preparedness; or

2592 (iii) notwithstanding whether a county participates in the Wildland Fire Suppression
2593 Fund created in Section 65A-8-204, any fire suppression or presuppression costs that may be
2594 paid for from the Wildland Fire Suppression Fund if the county participates in the Wildland
2595 Fire Suppression Fund;

2596 (c) to fund the Local Government Emergency Response Loan Fund created in Section
2597 53-2a-607;

2598 (d) the division may provide advanced funding from the disaster recovery account to
2599 recognized agents of the state when:

2600 (i) Utah has agreed, through the division, to enact the Emergency Management

2601 Assistance Compact with another member state that has requested assistance during a declared
2602 disaster;

2603 (ii) Utah agrees to provide resources to the requesting member state;

2604 (iii) the agent of the state who represents the requested resource has no other funding
2605 source available at the time of the Emergency Management Assistance Compact request; and

2606 (iv) the disaster recovery account has a balance of funds available to be utilized while
2607 maintaining a minimum balance of \$10,000,000;

2608 (e) the division may expend up to \$3,200,000 during fiscal year 2019 to fund
2609 operational costs incurred by the division during fiscal year 2019; and

2610 (f) to fund up to \$500,000 for the governor's emergency appropriations described in
2611 Subsection 63J-1-217(4).

2612 (3) All funding provided in advance to an agent of the state and subsequently
2613 reimbursed shall be credited to the account.

2614 (4) The state treasurer shall invest money in the disaster recovery account according to
2615 Title 51, Chapter 7, State Money Management Act.

2616 (5) (a) Except as provided in Subsections (1) and (2), the money in the disaster
2617 recovery account may not be diverted, appropriated, expended, or committed to be expended
2618 for a purpose that is not listed in this section.

2619 (b) Notwithstanding Section 63J-1-410, the Legislature may not appropriate money
2620 from the disaster recovery account to eliminate or otherwise reduce an operating deficit if the
2621 money appropriated from the disaster recovery account is expended or committed to be
2622 expended for a purpose other than one listed in this section.

2623 (c) The Legislature may not amend the purposes for which money in the disaster
2624 recovery account may be expended or committed to be expended except by the affirmative vote
2625 of two-thirds of all the members elected to each house.

2626 (6) The division:

2627 (a) shall provide the notice required by Subsection (2)(a)(ii) using the best available
2628 method under the circumstances as determined by the division; and

2629 (b) may provide the notice required by Subsection (2)(a)(ii) in electronic format.

2630 Section 129. Section 59-12-104 is amended to read:

2631 **59-12-104. Exemptions.**

2632 Exemptions from the taxes imposed by this chapter are as follows:

2633 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
2634 under Chapter 13, Motor and Special Fuel Tax Act;

2635 (2) subject to Section 59-12-104.6, sales to the state, its institutions, and its political
2636 subdivisions; however, this exemption does not apply to sales of:

2637 (a) construction materials except:

2638 (i) construction materials purchased by or on behalf of institutions of the public
2639 education system as defined in Utah Constitution, Article X, Section 2, provided the
2640 construction materials are clearly identified and segregated and installed or converted to real
2641 property which is owned by institutions of the public education system; and

2642 (ii) construction materials purchased by the state, its institutions, or its political
2643 subdivisions which are installed or converted to real property by employees of the state, its
2644 institutions, or its political subdivisions; or

2645 (b) tangible personal property in connection with the construction, operation,
2646 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
2647 providing additional project capacity, as defined in Section 11-13-103;

2648 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

2649 (i) the proceeds of each sale do not exceed \$1; and

2650 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
2651 the cost of the item described in Subsection (3)(b) as goods consumed; and

2652 (b) Subsection (3)(a) applies to:

2653 (i) food and food ingredients; or

2654 (ii) prepared food;

2655 (4) (a) sales of the following to a commercial airline carrier for in-flight consumption:

2656 (i) alcoholic beverages;

2657 (ii) food and food ingredients; or

2658 (iii) prepared food;

2659 (b) sales of tangible personal property or a product transferred electronically:

2660 (i) to a passenger;

2661 (ii) by a commercial airline carrier; and

2662 (iii) during a flight for in-flight consumption or in-flight use by the passenger; or

2663 (c) services related to Subsection (4)(a) or (b);
2664 (5) sales of parts and equipment for installation in an aircraft operated by a common
2665 carrier in interstate or foreign commerce;
2666 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
2667 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
2668 exhibitor, distributor, or commercial television or radio broadcaster;
2669 (7) (a) except as provided in Subsection (85) and subject to Subsection (7)(b), sales of
2670 cleaning or washing of tangible personal property if the cleaning or washing of the tangible
2671 personal property is not assisted cleaning or washing of tangible personal property;
2672 (b) if a seller that sells at the same business location assisted cleaning or washing of
2673 tangible personal property and cleaning or washing of tangible personal property that is not
2674 assisted cleaning or washing of tangible personal property, the exemption described in
2675 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
2676 or washing of the tangible personal property; and
2677 (c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3,
2678 Utah Administrative Rulemaking Act, the commission may make rules:
2679 (i) governing the circumstances under which sales are at the same business location;
2680 and
2681 (ii) establishing the procedures and requirements for a seller to separately account for
2682 sales of assisted cleaning or washing of tangible personal property;
2683 (8) sales made to or by religious or charitable institutions in the conduct of their regular
2684 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are
2685 fulfilled;
2686 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of
2687 this state if the vehicle is:
2688 (a) not registered in this state; and
2689 (b) (i) not used in this state; or
2690 (ii) used in this state:
2691 (A) if the vehicle is not used to conduct business, for a time period that does not
2692 exceed the longer of:
2693 (I) 30 days in any calendar year; or

2694 (II) the time period necessary to transport the vehicle to the borders of this state; or
2695 (B) if the vehicle is used to conduct business, for the time period necessary to transport
2696 the vehicle to the borders of this state;

2697 (10) (a) amounts paid for an item described in Subsection (10)(b) if:
2698 (i) the item is intended for human use; and
2699 (ii) (A) a prescription was issued for the item; or
2700 (B) the item was purchased by a hospital or other medical facility; and
2701 (b) (i) Subsection (10)(a) applies to:
2702 (A) a drug;
2703 (B) a syringe; or
2704 (C) a stoma supply; and
2705 (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2706 commission may by rule define the terms:
2707 (A) "syringe"; or
2708 (B) "stoma supply";

2709 (11) purchases or leases exempt under Section [19-12-201](#);
2710 (12) (a) sales of an item described in Subsection (12)(c) served by:
2711 (i) the following if the item described in Subsection (12)(c) is not available to the
2712 general public:
2713 (A) a church; or
2714 (B) a charitable institution; or
2715 (ii) an institution of higher education if:
2716 (A) the item described in Subsection (12)(c) is not available to the general public; or
2717 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
2718 offered by the institution of higher education; or
2719 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
2720 (i) a medical facility; or
2721 (ii) a nursing facility; and
2722 (c) Subsections (12)(a) and (b) apply to:
2723 (i) food and food ingredients;
2724 (ii) prepared food; or

2725 (iii) alcoholic beverages;

2726 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property

2727 or a product transferred electronically by a person:

2728 (i) regardless of the number of transactions involving the sale of that tangible personal

2729 property or product transferred electronically by that person; and

2730 (ii) not regularly engaged in the business of selling that type of tangible personal

2731 property or product transferred electronically;

2732 (b) this Subsection (13) does not apply if:

2733 (i) the sale is one of a series of sales of a character to indicate that the person is

2734 regularly engaged in the business of selling that type of tangible personal property or product

2735 transferred electronically;

2736 (ii) the person holds that person out as regularly engaged in the business of selling that

2737 type of tangible personal property or product transferred electronically;

2738 (iii) the person sells an item of tangible personal property or product transferred

2739 electronically that the person purchased as a sale that is exempt under Subsection (25); or

2740 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of

2741 this state in which case the tax is based upon:

2742 (A) the bill of sale or other written evidence of value of the vehicle or vessel being

2743 sold; or

2744 (B) in the absence of a bill of sale or other written evidence of value, the fair market

2745 value of the vehicle or vessel being sold at the time of the sale as determined by the

2746 commission; and

2747 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

2748 commission shall make rules establishing the circumstances under which:

2749 (i) a person is regularly engaged in the business of selling a type of tangible personal

2750 property or product transferred electronically;

2751 (ii) a sale of tangible personal property or a product transferred electronically is one of

2752 a series of sales of a character to indicate that a person is regularly engaged in the business of

2753 selling that type of tangible personal property or product transferred electronically; or

2754 (iii) a person holds that person out as regularly engaged in the business of selling a type

2755 of tangible personal property or product transferred electronically;

2756 (14) amounts paid or charged for a purchase or lease of machinery, equipment, normal
2757 operating repair or replacement parts, or materials, except for office equipment or office
2758 supplies, by:

2759 (a) a manufacturing facility that:

2760 (i) is located in the state; and

2761 (ii) uses or consumes the machinery, equipment, normal operating repair or
2762 replacement parts, or materials:

2763 (A) in the manufacturing process to manufacture an item sold as tangible personal
2764 property, as the commission may define that phrase in accordance with Title 63G, Chapter 3,
2765 Utah Administrative Rulemaking Act; or

2766 (B) for a scrap recycler, to process an item sold as tangible personal property, as the
2767 commission may define that phrase in accordance with Title 63G, Chapter 3, Utah
2768 Administrative Rulemaking Act;

2769 (b) an establishment, as the commission defines that term in accordance with Title
2770 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

2771 (i) is described in NAICS Subsector 212, Mining (except Oil and Gas), or NAICS
2772 Code 213113, Support Activities for Coal Mining, 213114, Support Activities for Metal
2773 Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining, of the
2774 2002 North American Industry Classification System of the federal Executive Office of the
2775 President, Office of Management and Budget;

2776 (ii) is located in the state; and

2777 (iii) uses or consumes the machinery, equipment, normal operating repair or
2778 replacement parts, or materials in:

2779 (A) the production process to produce an item sold as tangible personal property, as the
2780 commission may define that phrase in accordance with Title 63G, Chapter 3, Utah
2781 Administrative Rulemaking Act;

2782 (B) research and development, as the commission may define that phrase in accordance
2783 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

2784 (C) transporting, storing, or managing tailings, overburden, or similar waste materials
2785 produced from mining;

2786 (D) developing or maintaining a road, tunnel, excavation, or similar feature used in

2787 mining; or
2788 (E) preventing, controlling, or reducing dust or other pollutants from mining; or
2789 (c) an establishment, as the commission defines that term in accordance with Title 63G,
2790 Chapter 3, Utah Administrative Rulemaking Act, that:
2791 (i) is described in NAICS Code 518112, Web Search Portals, of the 2002 North
2792 American Industry Classification System of the federal Executive Office of the President,
2793 Office of Management and Budget;
2794 (ii) is located in the state; and
2795 (iii) uses or consumes the machinery, equipment, normal operating repair or
2796 replacement parts, or materials in the operation of the web search portal;
2797 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
2798 (i) tooling;
2799 (ii) special tooling;
2800 (iii) support equipment;
2801 (iv) special test equipment; or
2802 (v) parts used in the repairs or renovations of tooling or equipment described in
2803 Subsections (15)(a)(i) through (iv); and
2804 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
2805 (i) the tooling, equipment, or parts are used or consumed exclusively in the
2806 performance of any aerospace or electronics industry contract with the United States
2807 government or any subcontract under that contract; and
2808 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
2809 title to the tooling, equipment, or parts is vested in the United States government as evidenced
2810 by:
2811 (A) a government identification tag placed on the tooling, equipment, or parts; or
2812 (B) listing on a government-approved property record if placing a government
2813 identification tag on the tooling, equipment, or parts is impractical;
2814 (16) sales of newspapers or newspaper subscriptions;
2815 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a
2816 product transferred electronically traded in as full or part payment of the purchase price, except
2817 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,

2818 trade-ins are limited to other vehicles only, and the tax is based upon:

2819 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
2820 vehicle being traded in; or

2821 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
2822 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
2823 commission; and

2824 (b) Subsection (17)(a) does not apply to the following items of tangible personal
2825 property or products transferred electronically traded in as full or part payment of the purchase
2826 price:

2827 (i) money;

2828 (ii) electricity;

2829 (iii) water;

2830 (iv) gas; or

2831 (v) steam;

2832 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property
2833 or a product transferred electronically used or consumed primarily and directly in farming
2834 operations, regardless of whether the tangible personal property or product transferred
2835 electronically:

2836 (A) becomes part of real estate; or

2837 (B) is installed by a farmer, contractor, or subcontractor; or

2838 (ii) sales of parts used in the repairs or renovations of tangible personal property or a
2839 product transferred electronically if the tangible personal property or product transferred
2840 electronically is exempt under Subsection (18)(a)(i); and

2841 (b) amounts paid or charged for the following are subject to the taxes imposed by this
2842 chapter:

2843 (i) (A) subject to Subsection (18)(b)(i)(B), machinery, equipment, materials, or
2844 supplies if used in a manner that is incidental to farming; and

2845 (B) tangible personal property that is considered to be used in a manner that is
2846 incidental to farming includes:

2847 (I) hand tools; or

2848 (II) maintenance and janitorial equipment and supplies;

2849 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product
2850 transferred electronically if the tangible personal property or product transferred electronically
2851 is used in an activity other than farming; and

2852 (B) tangible personal property or a product transferred electronically that is considered
2853 to be used in an activity other than farming includes:

2854 (I) office equipment and supplies; or

2855 (II) equipment and supplies used in:

2856 (Aa) the sale or distribution of farm products;

2857 (Bb) research; or

2858 (Cc) transportation; or

2859 (iii) a vehicle required to be registered by the laws of this state during the period
2860 ending two years after the date of the vehicle's purchase;

2861 (19) sales of hay;

2862 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
2863 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or
2864 garden, farm, or other agricultural produce is sold by:

2865 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
2866 agricultural produce;

2867 (b) an employee of the producer described in Subsection (20)(a); or

2868 (c) a member of the immediate family of the producer described in Subsection (20)(a);

2869 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
2870 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

2871 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
2872 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
2873 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
2874 manufacturer, processor, wholesaler, or retailer;

2875 (23) a product stored in the state for resale;

2876 (24) (a) purchases of a product if:

2877 (i) the product is:

2878 (A) purchased outside of this state;

2879 (B) brought into this state;

2880 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and
2881 (II) by a nonresident person who is not living or working in this state at the time of the
2882 purchase;
2883 (C) used for the personal use or enjoyment of the nonresident person described in
2884 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and
2885 (D) not used in conducting business in this state; and
2886 (ii) for:
2887 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of
2888 the product for a purpose for which the product is designed occurs outside of this state;
2889 (B) a boat, the boat is registered outside of this state; or
2890 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
2891 outside of this state;
2892 (b) the exemption provided for in Subsection (24)(a) does not apply to:
2893 (i) a lease or rental of a product; or
2894 (ii) a sale of a vehicle exempt under Subsection (33); and
2895 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
2896 purposes of Subsection (24)(a), the commission may by rule define what constitutes the
2897 following:
2898 (i) conducting business in this state if that phrase has the same meaning in this
2899 Subsection (24) as in Subsection (63);
2900 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)
2901 as in Subsection (63); or
2902 (iii) a purpose for which a product is designed if that phrase has the same meaning in
2903 this Subsection (24) as in Subsection (63);
2904 (25) a product purchased for resale in the regular course of business, either in its
2905 original form or as an ingredient or component part of a manufactured or compounded product;
2906 (26) a product upon which a sales or use tax was paid to some other state, or one of its
2907 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
2908 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
2909 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
2910 Act;

2911 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
2912 person for use in compounding a service taxable under the subsections;

2913 (28) purchases made in accordance with the special supplemental nutrition program for
2914 women, infants, and children established in 42 U.S.C. Sec. 1786;

2915 (29) sales or leases of rolls, rollers, refractory brick, electric motors, or other
2916 replacement parts used in the furnaces, mills, or ovens of a steel mill described in SIC Code
2917 3312 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of
2918 the President, Office of Management and Budget;

2919 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State
2920 Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:

2921 (a) not registered in this state; and
2922 (b) (i) not used in this state; or
2923 (ii) used in this state:

2924 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a
2925 time period that does not exceed the longer of:

2926 (I) 30 days in any calendar year; or
2927 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to
2928 the borders of this state; or

2929 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time
2930 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this
2931 state;

2932 (31) sales of aircraft manufactured in Utah;

2933 (32) amounts paid for the purchase of telecommunications service for purposes of
2934 providing telecommunications service;

2935 (33) sales, leases, or uses of the following:

2936 (a) a vehicle by an authorized carrier; or
2937 (b) tangible personal property that is installed on a vehicle:

2938 (i) sold or leased to or used by an authorized carrier; and
2939 (ii) before the vehicle is placed in service for the first time;

2940 (34) (a) 45% of the sales price of any new manufactured home; and
2941 (b) 100% of the sales price of any used manufactured home;

2942 (35) sales relating to schools and fundraising sales;
2943 (36) sales or rentals of durable medical equipment if:
2944 (a) a person presents a prescription for the durable medical equipment; and
2945 (b) the durable medical equipment is used for home use only;
2946 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
2947 Section 72-11-102; and
2948 (b) the commission shall by rule determine the method for calculating sales exempt
2949 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
2950 (38) sales to a ski resort of:
2951 (a) snowmaking equipment;
2952 (b) ski slope grooming equipment;
2953 (c) passenger ropeways as defined in Section 72-11-102; or
2954 (d) parts used in the repairs or renovations of equipment or passenger ropeways
2955 described in Subsections (38)(a) through (c);
2956 (39) subject to Subsection 59-12-103(2)(j), sales of natural gas, electricity, heat, coal,
2957 fuel oil, or other fuels for industrial use;
2958 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
2959 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
2960 59-12-102;
2961 (b) if a seller that sells or rents at the same business location the right to use or operate
2962 for amusement, entertainment, or recreation one or more unassisted amusement devices and
2963 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
2964 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
2965 amusement, entertainment, or recreation for the assisted amusement devices; and
2966 (c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3,
2967 Utah Administrative Rulemaking Act, the commission may make rules:
2968 (i) governing the circumstances under which sales are at the same business location;
2969 and
2970 (ii) establishing the procedures and requirements for a seller to separately account for
2971 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for
2972 assisted amusement devices;

2973 (41) (a) sales of photocopies by:
2974 (i) a governmental entity; or
2975 (ii) an entity within the state system of public education, including:
2976 (A) a school; or
2977 (B) the State Board of Education; or
2978 (b) sales of publications by a governmental entity;
2979 (42) amounts paid for admission to an athletic event at an institution of higher
2980 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
2981 20 U.S.C. Sec. 1681 et seq.;

2982 (43) (a) sales made to or by:
2983 (i) an area agency on aging; or
2984 (ii) a senior citizen center owned by a county, city, or town; or
2985 (b) sales made by a senior citizen center that contracts with an area agency on aging;
2986 (44) sales or leases of semiconductor fabricating, processing, research, or development
2987 materials regardless of whether the semiconductor fabricating, processing, research, or
2988 development materials:
2989 (a) actually come into contact with a semiconductor; or
2990 (b) ultimately become incorporated into real property;

2991 (45) an amount paid by or charged to a purchaser for accommodations and services
2992 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
2993 59-12-104.2;

2994 (46) the lease or use of a vehicle issued a temporary sports event registration certificate
2995 in accordance with Section 41-3-306 for the event period specified on the temporary sports
2996 event registration certificate;

2997 (47) (a) sales or uses of electricity, if the sales or uses are made under a retail tariff
2998 adopted by the Public Service Commission only for purchase of electricity produced from a
2999 new alternative energy source built after January 1, 2016, as designated in the tariff by the
3000 Public Service Commission; and
3001 (b) for a residential use customer only, the exemption under Subsection (47)(a) applies
3002 only to the portion of the tariff rate a customer pays under the tariff described in Subsection
3003 (47)(a) that exceeds the tariff rate under the tariff described in Subsection (47)(a) that the

3004 customer would have paid absent the tariff;
3005 (48) sales or rentals of mobility enhancing equipment if a person presents a
3006 prescription for the mobility enhancing equipment;
3007 (49) sales of water in a:
3008 (a) pipe;
3009 (b) conduit;
3010 (c) ditch; or
3011 (d) reservoir;
3012 (50) sales of currency or coins that constitute legal tender of a state, the United States,
3013 or a foreign nation;
3014 (51) (a) sales of an item described in Subsection (51)(b) if the item:
3015 (i) does not constitute legal tender of a state, the United States, or a foreign nation; and
3016 (ii) has a gold, silver, or platinum content of 50% or more; and
3017 (b) Subsection (51)(a) applies to a gold, silver, or platinum:
3018 (i) ingot;
3019 (ii) bar;
3020 (iii) medallion; or
3021 (iv) decorative coin;
3022 (52) amounts paid on a sale-leaseback transaction;
3023 (53) sales of a prosthetic device:
3024 (a) for use on or in a human; and
3025 (b) (i) for which a prescription is required; or
3026 (ii) if the prosthetic device is purchased by a hospital or other medical facility;
3027 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of
3028 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery
3029 or equipment is primarily used in the production or postproduction of the following media for
3030 commercial distribution:
3031 (i) a motion picture;
3032 (ii) a television program;
3033 (iii) a movie made for television;
3034 (iv) a music video;

3035 (v) a commercial;
3036 (vi) a documentary; or
3037 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the
3038 commission by administrative rule made in accordance with Subsection (54)(d); or
3039 (b) purchases, leases, or rentals of machinery or equipment by an establishment
3040 described in Subsection (54)(c) that is used for the production or postproduction of the
3041 following are subject to the taxes imposed by this chapter:
3042 (i) a live musical performance;
3043 (ii) a live news program; or
3044 (iii) a live sporting event;
3045 (c) the following establishments listed in the 1997 North American Industry
3046 Classification System of the federal Executive Office of the President, Office of Management
3047 and Budget, apply to Subsections (54)(a) and (b):
3048 (i) NAICS Code 512110; or
3049 (ii) NAICS Code 51219; and
3050 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3051 commission may by rule:
3052 (i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi);
3053 or
3054 (ii) define:
3055 (A) "commercial distribution";
3056 (B) "live musical performance";
3057 (C) "live news program"; or
3058 (D) "live sporting event";
3059 (55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
3060 on or before June 30, 2027, of tangible personal property that:
3061 (i) is leased or purchased for or by a facility that:
3062 (A) is an alternative energy electricity production facility;
3063 (B) is located in the state; and
3064 (C) (I) becomes operational on or after July 1, 2004; or
3065 (II) has its generation capacity increased by one or more megawatts on or after July 1,

3066 2004, as a result of the use of the tangible personal property;
3067 (ii) has an economic life of five or more years; and
3068 (iii) is used to make the facility or the increase in capacity of the facility described in
3069 Subsection (55)(a)(i) operational up to the point of interconnection with an existing
3070 transmission grid including:
3071 (A) a wind turbine;
3072 (B) generating equipment;
3073 (C) a control and monitoring system;
3074 (D) a power line;
3075 (E) substation equipment;
3076 (F) lighting;
3077 (G) fencing;
3078 (H) pipes; or
3079 (I) other equipment used for locating a power line or pole; and
3080 (b) this Subsection (55) does not apply to:
3081 (i) tangible personal property used in construction of:
3082 (A) a new alternative energy electricity production facility; or
3083 (B) the increase in the capacity of an alternative energy electricity production facility;
3084 (ii) contracted services required for construction and routine maintenance activities;
3085 and
3086 (iii) unless the tangible personal property is used or acquired for an increase in capacity
3087 of the facility described in Subsection (55)(a)(i)(C)(II), tangible personal property used or
3088 acquired after:
3089 (A) the alternative energy electricity production facility described in Subsection
3090 (55)(a)(i) is operational as described in Subsection (55)(a)(iii); or
3091 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described
3092 in Subsection (55)(a)(iii);
3093 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
3094 on or before June 30, 2027, of tangible personal property that:
3095 (i) is leased or purchased for or by a facility that:
3096 (A) is a waste energy production facility;

3097 (B) is located in the state; and
3098 (C) (I) becomes operational on or after July 1, 2004; or
3099 (II) has its generation capacity increased by one or more megawatts on or after July 1,
3100 2004, as a result of the use of the tangible personal property;
3101 (ii) has an economic life of five or more years; and
3102 (iii) is used to make the facility or the increase in capacity of the facility described in
3103 Subsection (56)(a)(i) operational up to the point of interconnection with an existing
3104 transmission grid including:
3105 (A) generating equipment;
3106 (B) a control and monitoring system;
3107 (C) a power line;
3108 (D) substation equipment;
3109 (E) lighting;
3110 (F) fencing;
3111 (G) pipes; or
3112 (H) other equipment used for locating a power line or pole; and
3113 (b) this Subsection (56) does not apply to:
3114 (i) tangible personal property used in construction of:
3115 (A) a new waste energy facility; or
3116 (B) the increase in the capacity of a waste energy facility;
3117 (ii) contracted services required for construction and routine maintenance activities;
3118 and
3119 (iii) unless the tangible personal property is used or acquired for an increase in capacity
3120 described in Subsection (56)(a)(i)(C)(II), tangible personal property used or acquired after:
3121 (A) the waste energy facility described in Subsection (56)(a)(i) is operational as
3122 described in Subsection (56)(a)(iii); or
3123 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described
3124 in Subsection (56)(a)(iii);
3125 (57) (a) leases of five or more years or purchases made on or after July 1, 2004, but on
3126 or before June 30, 2027, of tangible personal property that:
3127 (i) is leased or purchased for or by a facility that:

3128 (A) is located in the state;

3129 (B) produces fuel from alternative energy, including:

3130 (I) methanol; or

3131 (II) ethanol; and

3132 (C) (I) becomes operational on or after July 1, 2004; or

3133 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as

3134 a result of the installation of the tangible personal property;

3135 (ii) has an economic life of five or more years; and

3136 (iii) is installed on the facility described in Subsection (57)(a)(i);

3137 (b) this Subsection (57) does not apply to:

3138 (i) tangible personal property used in construction of:

3139 (A) a new facility described in Subsection (57)(a)(i); or

3140 (B) the increase in capacity of the facility described in Subsection (57)(a)(i); or

3141 (ii) contracted services required for construction and routine maintenance activities;

3142 and

3143 (iii) unless the tangible personal property is used or acquired for an increase in capacity

3144 described in Subsection (57)(a)(i)(C)(II), tangible personal property used or acquired after:

3145 (A) the facility described in Subsection (57)(a)(i) is operational; or

3146 (B) the increased capacity described in Subsection (57)(a)(i) is operational;

3147 (58) (a) subject to Subsection (58)(b), sales of tangible personal property or a product

3148 transferred electronically to a person within this state if that tangible personal property or

3149 product transferred electronically is subsequently shipped outside the state and incorporated

3150 pursuant to contract into and becomes a part of real property located outside of this state; and

3151 (b) the exemption under Subsection (58)(a) is not allowed to the extent that the other

3152 state or political entity to which the tangible personal property is shipped imposes a sales, use,

3153 gross receipts, or other similar transaction excise tax on the transaction against which the other

3154 state or political entity allows a credit for sales and use taxes imposed by this chapter;

3155 (59) purchases:

3156 (a) of one or more of the following items in printed or electronic format:

3157 (i) a list containing information that includes one or more:

3158 (A) names; or

3159 (B) addresses; or
3160 (ii) a database containing information that includes one or more:
3161 (A) names; or
3162 (B) addresses; and
3163 (b) used to send direct mail;
3164 (60) redemptions or repurchases of a product by a person if that product was:
3165 (a) delivered to a pawnbroker as part of a pawn transaction; and
3166 (b) redeemed or repurchased within the time period established in a written agreement
3167 between the person and the pawnbroker for redeeming or repurchasing the product;
3168 (61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:
3169 (i) is purchased or leased by, or on behalf of, a telecommunications service provider;
3170 and
3171 (ii) has a useful economic life of one or more years; and
3172 (b) the following apply to Subsection (61)(a):
3173 (i) telecommunications enabling or facilitating equipment, machinery, or software;
3174 (ii) telecommunications equipment, machinery, or software required for 911 service;
3175 (iii) telecommunications maintenance or repair equipment, machinery, or software;
3176 (iv) telecommunications switching or routing equipment, machinery, or software; or
3177 (v) telecommunications transmission equipment, machinery, or software;
3178 (62) (a) beginning on July 1, 2006, and ending on June 30, 2027, purchases of tangible
3179 personal property or a product transferred electronically that are used in the research and
3180 development of alternative energy technology; and
3181 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3182 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes
3183 purchases of tangible personal property or a product transferred electronically that are used in
3184 the research and development of alternative energy technology;
3185 (63) (a) purchases of tangible personal property or a product transferred electronically
3186 if:
3187 (i) the tangible personal property or product transferred electronically is:
3188 (A) purchased outside of this state;
3189 (B) brought into this state at any time after the purchase described in Subsection

3190 (63)(a)(i)(A); and
3191 (C) used in conducting business in this state; and
3192 (ii) for:
3193 (A) tangible personal property or a product transferred electronically other than the
3194 tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property
3195 for a purpose for which the property is designed occurs outside of this state; or
3196 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
3197 outside of this state and not required to be registered in this state under Section 41-1a-202 or
3198 73-18-9 based on residency;
3199 (b) the exemption provided for in Subsection (63)(a) does not apply to:
3200 (i) a lease or rental of tangible personal property or a product transferred electronically;
3201 or
3202 (ii) a sale of a vehicle exempt under Subsection (33); and
3203 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
3204 purposes of Subsection (63)(a), the commission may by rule define what constitutes the
3205 following:
3206 (i) conducting business in this state if that phrase has the same meaning in this
3207 Subsection (63) as in Subsection (24);
3208 (ii) the first use of tangible personal property or a product transferred electronically if
3209 that phrase has the same meaning in this Subsection (63) as in Subsection (24); or
3210 (iii) a purpose for which tangible personal property or a product transferred
3211 electronically is designed if that phrase has the same meaning in this Subsection (63) as in
3212 Subsection (24);
3213 (64) sales of disposable home medical equipment or supplies if:
3214 (a) a person presents a prescription for the disposable home medical equipment or
3215 supplies;
3216 (b) the disposable home medical equipment or supplies are used exclusively by the
3217 person to whom the prescription described in Subsection (64)(a) is issued; and
3218 (c) the disposable home medical equipment and supplies are listed as eligible for
3219 payment under:
3220 (i) Title XVIII, federal Social Security Act; or

- 3221 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;
3222 (65) sales:
3223 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
3224 District Act; or
3225 (b) of tangible personal property to a subcontractor of a public transit district, if the
3226 tangible personal property is:
3227 (i) clearly identified; and
3228 (ii) installed or converted to real property owned by the public transit district;
3229 (66) sales of construction materials:
3230 (a) purchased on or after July 1, 2010;
3231 (b) purchased by, on behalf of, or for the benefit of an international airport:
3232 (i) located within a county of the first class; and
3233 (ii) that has a United States customs office on its premises; and
3234 (c) if the construction materials are:
3235 (i) clearly identified;
3236 (ii) segregated; and
3237 (iii) installed or converted to real property:
3238 (A) owned or operated by the international airport described in Subsection (66)(b); and
3239 (B) located at the international airport described in Subsection (66)(b);
3240 (67) sales of construction materials:
3241 (a) purchased on or after July 1, 2008;
3242 (b) purchased by, on behalf of, or for the benefit of a new airport:
3243 (i) located within a county of the second class; and
3244 (ii) that is owned or operated by a city in which an airline as defined in Section
3245 59-2-102 is headquartered; and
3246 (c) if the construction materials are:
3247 (i) clearly identified;
3248 (ii) segregated; and
3249 (iii) installed or converted to real property:
3250 (A) owned or operated by the new airport described in Subsection (67)(b);
3251 (B) located at the new airport described in Subsection (67)(b); and

3252 (C) as part of the construction of the new airport described in Subsection (67)(b);
3253 (68) except for the tax imposed by Subsection 59-12-103(2)(d), sales of fuel to a
3254 common carrier that is a railroad for use in a locomotive engine;
3255 (69) purchases and sales described in Section 63H-4-111;
3256 (70) (a) sales of tangible personal property to an aircraft maintenance, repair, and
3257 overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of
3258 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
3259 lists a state or country other than this state as the location of registry of the fixed wing turbine
3260 powered aircraft; or
3261 (b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul
3262 provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of
3263 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
3264 lists a state or country other than this state as the location of registry of the fixed wing turbine
3265 powered aircraft;
3266 (71) subject to Section 59-12-104.4, sales of a textbook for a higher education course:
3267 (a) to a person admitted to an institution of higher education; and
3268 (b) by a seller, other than a bookstore owned by an institution of higher education, if
3269 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a
3270 textbook for a higher education course;
3271 (72) a license fee or tax a municipality imposes in accordance with Subsection
3272 10-1-203(5) on a purchaser from a business for which the municipality provides an enhanced
3273 level of municipal services;
3274 (73) amounts paid or charged for construction materials used in the construction of a
3275 new or expanding life science research and development facility in the state, if the construction
3276 materials are:
3277 (a) clearly identified;
3278 (b) segregated; and
3279 (c) installed or converted to real property;
3280 (74) amounts paid or charged for:
3281 (a) a purchase or lease of machinery and equipment that:
3282 (i) are used in performing qualified research:

3283 (A) as defined in Section 41(d), Internal Revenue Code; and
3284 (B) in the state; and
3285 (ii) have an economic life of three or more years; and
3286 (b) normal operating repair or replacement parts:
3287 (i) for the machinery and equipment described in Subsection (74)(a); and
3288 (ii) that have an economic life of three or more years;
3289 (75) a sale or lease of tangible personal property used in the preparation of prepared
3290 food if:
3291 (a) for a sale:
3292 (i) the ownership of the seller and the ownership of the purchaser are identical; and
3293 (ii) the seller or the purchaser paid a tax under this chapter on the purchase of that
3294 tangible personal property prior to making the sale; or
3295 (b) for a lease:
3296 (i) the ownership of the lessor and the ownership of the lessee are identical; and
3297 (ii) the lessor or the lessee paid a tax under this chapter on the purchase of that tangible
3298 personal property prior to making the lease;
3299 (76) (a) purchases of machinery or equipment if:
3300 (i) the purchaser is an establishment described in NAICS Subsector 713, Amusement,
3301 Gambling, and Recreation Industries, of the 2012 North American Industry Classification
3302 System of the federal Executive Office of the President, Office of Management and Budget;
3303 (ii) the machinery or equipment:
3304 (A) has an economic life of three or more years; and
3305 (B) is used by one or more persons who pay admission or user fees described in
3306 Subsection 59-12-103(1)(f) to the purchaser of the machinery and equipment; and
3307 (iii) 51% or more of the purchaser's sales revenue for the previous calendar quarter is:
3308 (A) amounts paid or charged as admission or user fees described in Subsection
3309 59-12-103(1)(f); and
3310 (B) subject to taxation under this chapter; and
3311 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3312 commission may make rules for verifying that 51% of a purchaser's sales revenue for the
3313 previous calendar quarter is:

3314 (i) amounts paid or charged as admission or user fees described in Subsection
3315 59-12-103(1)(f); and
3316 (ii) subject to taxation under this chapter;
3317 (77) purchases of a short-term lodging consumable by a business that provides
3318 accommodations and services described in Subsection 59-12-103(1)(i);
3319 (78) amounts paid or charged to access a database:
3320 (a) if the primary purpose for accessing the database is to view or retrieve information
3321 from the database; and
3322 (b) not including amounts paid or charged for a:
3323 (i) digital audio work;
3324 (ii) digital audio-visual work; or
3325 (iii) digital book;
3326 (79) amounts paid or charged for a purchase or lease made by an electronic financial
3327 payment service, of:
3328 (a) machinery and equipment that:
3329 (i) are used in the operation of the electronic financial payment service; and
3330 (ii) have an economic life of three or more years; and
3331 (b) normal operating repair or replacement parts that:
3332 (i) are used in the operation of the electronic financial payment service; and
3333 (ii) have an economic life of three or more years;
3334 (80) sales of a fuel cell as defined in Section 54-15-102;
3335 (81) amounts paid or charged for a purchase or lease of tangible personal property or a
3336 product transferred electronically if the tangible personal property or product transferred
3337 electronically:
3338 (a) is stored, used, or consumed in the state; and
3339 (b) is temporarily brought into the state from another state:
3340 (i) during a disaster period as defined in Section 53-2a-1202;
3341 (ii) by an out-of-state business as defined in Section 53-2a-1202;
3342 (iii) for a declared state disaster or emergency as defined in Section 53-2a-1202; and
3343 (iv) for disaster- or emergency-related work as defined in Section 53-2a-1202;
3344 (82) sales of goods and services at a morale, welfare, and recreation facility, as defined

3345 in Section [~~39-9-102~~] [39A-7-102](#), made pursuant to [~~Title 39, Chapter 9~~] Title 39A, Chapter 7,
3346 State Morale, Welfare, and Recreation Program;

3347 (83) amounts paid or charged for a purchase or lease of molten magnesium;

3348 (84) amounts paid or charged for a purchase or lease made by a qualifying data center
3349 or an occupant of a qualifying data center of machinery, equipment, or normal operating repair
3350 or replacement parts, if the machinery, equipment, or normal operating repair or replacement
3351 parts:

3352 (a) are used in:

3353 (i) the operation of the qualifying data center; or

3354 (ii) the occupant's operations in the qualifying data center; and

3355 (b) have an economic life of one or more years;

3356 (85) sales of cleaning or washing of a vehicle, except for cleaning or washing of a
3357 vehicle that includes cleaning or washing of the interior of the vehicle;

3358 (86) amounts paid or charged for a purchase or lease of machinery, equipment, normal
3359 operating repair or replacement parts, catalysts, chemicals, reagents, solutions, or supplies used
3360 or consumed:

3361 (a) by a refiner who owns, leases, operates, controls, or supervises a refinery as defined
3362 in Section 79-6-701 located in the state;

3363 (b) if the machinery, equipment, normal operating repair or replacement parts,
3364 catalysts, chemicals, reagents, solutions, or supplies are used or consumed in:

3365 (i) the production process to produce gasoline or diesel fuel, or at which blendstock is
3366 added to gasoline or diesel fuel;

3367 (ii) research and development;

3368 (iii) transporting, storing, or managing raw materials, work in process, finished
3369 products, and waste materials produced from refining gasoline or diesel fuel, or adding
3370 blendstock to gasoline or diesel fuel;

3371 (iv) developing or maintaining a road, tunnel, excavation, or similar feature used in
3372 refining; or

3373 (v) preventing, controlling, or reducing pollutants from refining; and

3374 (c) if the person holds a valid refiner tax exemption certification as defined in Section
3375 [79-6-701](#);

3376 (87) amounts paid to or charged by a proprietor for accommodations and services, as
3377 defined in Section [63H-1-205](#), if the proprietor is subject to the MIDA accommodations tax
3378 imposed under Section [63H-1-205](#);

3379 (88) amounts paid or charged for a purchase or lease of machinery, equipment, normal
3380 operating repair or replacement parts, or materials, except for office equipment or office
3381 supplies, by an establishment, as the commission defines that term in accordance with Title
3382 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

3383 (a) is described in NAICS Code 621511, Medical Laboratories, of the 2017 North
3384 American Industry Classification System of the federal Executive Office of the President,
3385 Office of Management and Budget;

3386 (b) is located in this state; and

3387 (c) uses the machinery, equipment, normal operating repair or replacement parts, or
3388 materials in the operation of the establishment; and

3389 (89) amounts paid or charged for an item exempt under Section [59-12-104.10](#).

3390 Section 130. Section **76-5-102.4** is amended to read:

3391 **76-5-102.4. Assault against peace officer or a military servicemember in uniform**

3392 **-- Penalties.**

3393 (1) As used in this section:

3394 (a) "Assault" means the same as that term is defined in Section [76-5-102](#).

3395 (b) "Military servicemember in uniform" means:

3396 (i) a member of any branch of the United States military who is wearing a uniform as
3397 authorized by the member's branch of service; or

3398 (ii) a member of the National Guard serving as provided in Section [~~39-1-5 or 39-1-9~~]
3399 [39A-3-103](#).

3400 (c) "Peace officer" means:

3401 (i) a law enforcement officer certified under Section [53-13-103](#);

3402 (ii) a correctional officer under Section [53-13-104](#);

3403 (iii) a special function officer under Section [53-13-105](#); or

3404 (iv) a federal officer under Section [53-13-106](#).

3405 (d) "Threat of violence" means the same as that term is defined in Section [76-5-107](#).

3406 (2) A person is guilty of a class A misdemeanor, except as provided in Subsections (3)

3407 and (4), who:

3408 (a) commits an assault or threat of violence against a peace officer, with knowledge that
3409 the person is a peace officer, and when the peace officer is acting within the scope of authority
3410 as a peace officer; or

3411 (b) commits an assault or threat of violence against a military servicemember in
3412 uniform when that servicemember is on orders and acting within the scope of authority granted
3413 to the military servicemember in uniform.

3414 (3) A person who violates Subsection (2) is guilty of a third degree felony if the
3415 person:

3416 (a) has been previously convicted of a class A misdemeanor or a felony violation of
3417 this section; or

3418 (b) the person causes substantial bodily injury.

3419 (4) A person who violates Subsection (2) is guilty of a second degree felony if the
3420 person uses:

3421 (a) a dangerous weapon as defined in Section [76-1-601](#); or

3422 (b) other means or force likely to produce death or serious bodily injury.

3423 (5) A person who violates this section shall serve, in jail or another correctional
3424 facility, a minimum of:

3425 (a) 90 consecutive days for a second offense; and

3426 (b) 180 consecutive days for each subsequent offense.

3427 (6) The court may suspend the imposition or execution of the sentence required under
3428 Subsection (5) if the court finds that the interests of justice would be best served by the
3429 suspension and the court makes specific findings concerning the disposition on the record.

3430 (7) This section does not affect or limit any individual's constitutional right to the
3431 lawful expression of free speech, the right of assembly, or any other recognized rights secured
3432 by the Constitution or laws of Utah or by the Constitution or laws of the United States.

3433 Section 131. Section **78B-20-302** is amended to read:

3434 **78B-20-302. Proceeding for temporary custody -- Order.**

3435 (1) After a deploying parent receives notice of deployment and until the deployment
3436 terminates, a court may issue a temporary order granting custodial responsibility unless
3437 prohibited by Section [~~39-7-105~~] [39A-6-105](#) and the Servicemembers Civil Relief Act, 50

3438 U.S.C. Appendix Sections 521 and 522. A court may not issue a permanent order granting
3439 custodial responsibility without the consent of the deploying parent.

3440 (2) At any time after a deploying parent receives notice of deployment, either parent
3441 may file a motion regarding custodial responsibility of a child during deployment. The motion
3442 shall be filed in a pending proceeding for custodial responsibility in a court with jurisdiction
3443 under Section 78B-20-104 or, if there is no pending proceeding in a court with jurisdiction
3444 under Section 78B-20-104, in a new action for granting custodial responsibility during
3445 deployment.

3446 Section 132. Section 78B-20-311 is amended to read:

3447 **78B-20-311. Modifying or terminating grant of custodial responsibility to**
3448 **nonparent.**

3449 (1) Except for an order under Section 78B-20-305, except as otherwise provided in
3450 Subsection (2), and consistent with Section [~~39-7-105~~] 39A-6-105 and the Servicemembers
3451 Civil Relief Act, 50 U.S.C. Appendix Sections 521 and 522, on motion of a deploying parent,
3452 other parent, or any nonparent to whom caretaking authority, decision-making authority, or
3453 limited contact has been granted, the court may modify or terminate the grant if the
3454 modification or termination is consistent with this part and it is in the best interest of the child.
3455 A modification is temporary and terminates pursuant to Part 4, Return from Deployment, after
3456 the deploying parent returns from deployment, unless the grant has been terminated before that
3457 time by court order.

3458 (2) On motion of a deploying parent, the court shall terminate a grant of limited
3459 contact.

3460 Section 133. **Repealer.**

3461 This bill repeals:

3462 Section 39-1-2, **Militia divided into two parts.**

3463 Section 39-1-4, **Staff of commander in chief.**

3464 Section 39-1-5, **Governor may call guard into active service -- Authority.**

3465 Section 39-1-7, **Muster of unorganized militia.**

3466 Section 39-1-10, **Unorganized militia in service, how governed.**

3467 Section 39-1-12.5, **Convening authority for military court.**

3468 Section 39-1-13, **Adjutant general -- As disbursing and property officer.**

3469 Section 39-1-14, Adjutant general -- Drawing vouchers for property damage.
3470 Section 39-1-15, Adjutant general -- Disposition of unserviceable property.
3471 Section 39-1-16, Adjutant general -- Rendering accounts.
3472 Section 39-1-17, Adjutant general -- Custodian of military trophies.
3473 Section 39-1-18, Director of joint staff -- Assistant adjutant general for the army --
3474 Assistant adjutant general for air -- Commander, land component command -- Chief of
3475 staff for air -- Officer for permanent duty as personnel officer.
3476 Section 39-1-19, Clerical assistance.
3477 Section 39-1-21, Adjutant general -- Salary.
3478 Section 39-1-22, Caretakers.
3479 Section 39-1-24, Duties of assistant adjutants general.
3480 Section 39-1-25, Property and fiscal officer of the United States for Utah.
3481 Section 39-1-26, Assistant quartermaster-general.
3482 Section 39-1-28, Loss of property -- Liability.
3483 Section 39-1-29, Organization of National Guard controlled by federal law.
3484 Section 39-1-30, Officers of National Guard -- Commissions.
3485 Section 39-1-31, Commissions to officers -- Relative rank.
3486 Section 39-1-32, National Guard -- Enlistment -- Qualifications -- Discharge.
3487 Section 39-1-33, Noncommissioned officers.
3488 Section 39-1-34, Excuse from drill -- Furloughs and leaves of absence.
3489 Section 39-1-35, State employees in National Guard -- Care of dependents when
3490 called into service.
3491 Section 39-1-37, Military duties.
3492 Section 39-1-38, Regulations and forms.
3493 Section 39-1-38.5, Utah Manual for Military Courts to be issued -- Military court
3494 jurisdiction.
3495 Section 39-1-39, Orders for duty -- How served.
3496 Section 39-1-41, Discharge or dismissal.
3497 Section 39-1-44, Members of military courts exempt from liability.
3498 Section 39-1-45, Jurisdiction presumed.
3499 Section 39-1-46, Arsenal -- Military supplies -- Loss.

3500 Section **39-1-52**, Encampments.

3501 Section **39-1-53**, Military units not to leave state.

3502 Section **39-1-54**, Privilege from arrest or citation -- Exceptions.

3503 Section **39-1-56**, Execution of a judgment imposing a fine -- Disposition of fines.

3504 Section **39-1-58**, Vacating officer commissions -- Placement of officers in reserves.

3505 Section **39-1-60**, Laws and regulations of United States control.

3506 Section **39-1-62**, Group life insurance for members of National Guard.

3507 Section **39-2-7**, Budget -- Annual legislative approval.

3508 Section **39-4-2**, Governor to prescribe rules and regulations.

3509 Section **39-4-6**, Forces of another state in fresh pursuit may make arrests.

3510 Section **39-4-13**, Short title.

3511 Section **39-5-1**, Power of governor to execute.

3512 Section **39-5-2**, Form of compact.

3513 Section **39-5-3**, Owner of property free from liability for injuries to persons or

3514 **property during actual, impending, or mock attack.**

3515 Section **39-6-18**, Convening military court.

3516 Section **39-6-21**, Military court -- Duties of convening authority.

3517 Section **39-6-36**, Desertion or absence without leave and other offenses -- Time

3518 **limit on trial -- Tolling of time limits.**

3519 Section **39-6-48**, Cruel and unusual punishments -- Use of irons.

3520 Section **39-6-57**, Convening authority -- Approval of findings and sentence.

3521 Section **39-6-111**, Action by military court -- Protection from prosecution.

3522 Section **39-6-112**, Presumption of military court jurisdiction.

3523 Section **39-6-113**, Jurisdiction over offenses.

3524 Section **39-7-101**, Short title.

3525 Section **39-7-103**, Application of this chapter.

3526 Section **39-8-101**, Definitions.

3527 Section **39-8-102**, Counseling program.

3528 Section **39-9-106**, Risk management.

3529 Section **39-9-107**, Equipment rentals and sales of food and beverage.